

FIRST PRINT

**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(CONTRIBUTIONS PLANS) AMENDMENT BILL 1991**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to regulate further the imposition of conditions on the granting of development consent that require a dedication of land or a contribution of money as referred to in section 94 of the Environmental Planning and Assessment Act 1979.

As a consequence of the amendments, a local government council will not be able to impose such a condition unless it is of a kind allowed by, and is imposed in accordance with, a public document (to be known as a contributions plan) adopted by the council.

The amendments also define the powers of the Minister and the Director of Planning in imposing section 94 conditions and make it clear that, when imposing such conditions, they will be required to have regard to (but will not be bound by) any relevant contributions plans.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of provisions of the proposed Act.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act.

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**SCHEDULE 1—AMENDMENTS**

**Use of monetary contributions**

Schedule 1 (1) (a) amends section 94 (3) which, when amended, will provide that any monetary contribution received for the purpose of providing, extending or augmenting a particular public amenity or public service, together with any additional amount earned by its investment, is to be held by the consent authority and applied for that purpose within a reasonable time.

*Environmental Planning and Assessment (Contributions Plans) Amendment 1991*

The amendments will remove the current requirement for each contribution to be held in trust (so that councils may keep all those contributions in a common reserve until they are used) and expressly require any interest earned from the investment of each contribution to be used for the same purpose as the contribution.

**Application of contributions plans**

Schedule 1 (1) (b) amends section 94 to provide that, when granting consent to a development application made on or after the day proclaimed in that regard, a council may impose a section 94 condition only if it is of a kind allowed by, and is in accordance with, a contributions plan approved by the council.

A condition of a kind allowed by a contributions plan remains appealable as unreasonable.

**Section 94 conditions imposed by the Minister or Director**

Schedule 1 (2) inserts new section 94AA. The proposed section states how section 94 will apply if the Minister for Planning or the Director of Planning wants to impose a section 94 condition when granting consent to the carrying out of development:

- on land that is within a growth centre (defined as including a "designated area" under the Albury-Wodonga Development Act 1974); or
- on other land that is within a single local government area.

In the case of land within a growth centre, such a condition will be able to require a contribution towards the provision of public amenities or public services for the whole of the growth centre (regardless of local government boundaries).

When imposing a section 94 condition in any case, the Minister or Director must have regard to (but is not bound by) any relevant contributions plan. Any money received as a consequence of any such condition must be transferred to the development corporation for the centre or the council of the area concerned and must be used within a reasonable time for the purpose for which it was levied.

**Making and effect of contributions plans**

Schedule 1 (2) also inserts new sections 94AB and 94AC. Of the proposed sections:

Section 94AB provides for the making and approval of contributions plans.

It requires that such a plan be consistent with any relevant Ministerial directions made under section 94A. It leaves most of the subject-matter (together with requirements for the drafting, exhibition and approval procedures) to be determined by regulations and provides a presumption that those procedures have been complied with.

Section 94AC provides for judicial notice to be taken of a contributions plan and of the date it came into effect. It also prohibits a challenge to the validity of the procedures followed in making a contributions plan unless it is commenced in the Land and Environment Court within 3 months after the plan came into effect. The effect of anything duly done under a plan before it is amended or repealed is preserved.

FIRST PRINT

**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(CONTRIBUTIONS PLANS) AMENDMENT BILL 1991**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Environmental Planning and Assessment Act 1979 No. 203

**SCHEDULE 1—AMENDMENTS**

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**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(CONTRIBUTIONS PLANS) AMENDMENT BILL 1991**

NEW SOUTH WALES



No.       , 1991

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**A BILL FOR**

An Act to amend the Environmental Planning and Assessment Act 1979 with respect to conditions of development consent concerning public amenities and public services; and for related purposes.

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*Environmental Planning and Assessment (Contributions Plans) Amendment 1991*

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Environmental Planning and Assessment (Contributions Plans) Amendment Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Environmental Planning and Assessment Act 1979  
No. 203**

3. The Environmental Planning and Assessment Act 1979 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 94 (**Payment towards provision or improvement of amenities or services**):

(a) From section 94 (3), omit “in trust”, insert instead “(and any additional amount earned from its investment)”.

(b) After section 94 (6), insert:

(7) When granting consent to a development application made on or after the day fixed by proclamation for the purposes of this subsection, a council may impose a condition referred to in this section only if it is of a kind allowed by, and is determined in accordance with, a contributions plan approved under section 94AB.

(8) A condition of a kind allowed by a contributions plan may be disallowed or amended by the Court on appeal because it is unreasonable, even if it was determined in accordance with the plan.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Sections 94AA–94AC:

After section 94, insert:

**Section 94 conditions imposed by the Minister or Director**

94AA. (1) The Minister or the Director, as the consent authority determining a development application, may impose conditions referred to in section 94 if the application relates:

- (a) to land within a growth centre; or
- (b) to other land within a single area.

(2) Section 94, as modified by this section, applies to the Minister or the Director determining such a development application as consent authority.

(3) When the development application relates to land within a growth centre, section 94 applies as if references in that section to the area were references to the growth centre.

(4) Before imposing any condition referred to in section 94, the Minister or the Director must have regard to any contributions plan approved under section 94AB that applies to the whole or any part of the growth centre or area in which the relevant land is situated.

(5) The Minister or the Director may impose a condition referred to in section 94 even though it is not of a kind allowed by, or not in accordance with, a contributions plan.

(6) Any monetary contribution paid in accordance with a condition referred to in section 94 imposed by the Minister or the Director:

- (a) must be paid by the Minister or Director to the corporation for the growth centre or the council of the area concerned; and
- (b) must (together with any additional amount earned from its investment) be applied within a reasonable time for the purpose for which it was levied.

(7) This section applies to the Minister as consent authority whether or not the Minister is consent authority pursuant to section 101.



SCHEDULE 1—AMENDMENTS—*continued*

(8) In this section, “**growth centre**” means:

- (a) a growth centre, within the meaning of the Growth Centres (Development Corporations) Act 1974; or
- (b) a designated area, within the meaning of the Albury-Wodonga Development Act 1974.

**Contributions plans—making**

94AB. (1) A council may prepare and approve a contributions plan for the purpose of imposing conditions referred to in section 94.

(2) One or more contributions plans may be made for all or any part of the council’s area and in relation to one or more public amenities or public services.

(3) The council must not approve a contributions plan that is inconsistent with any direction given to it under section 94A.

(4) Except as provided by this section, the format, structure, subject-matter and procedures for the preparation, public exhibition, approval, amendment and repeal of a contributions plan are to be as prescribed.

(5) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a contributions plan have been complied with and performed.

**Contributions plans—judicial notice, validity etc.**

94AC. (1) Judicial notice is to be taken of a contributions plan and of the date on which the plan came into effect.

(2) The validity of any procedure required to be followed in making or approving a contributions plan is not to be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date on which the plan came into effect.

(3) The amendment or repeal, whether in whole or in part, of a contributions plan does not affect the previous operation of the plan or anything duly done under the plan.

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ENVIRONMENTAL PLANNING AND ASSESSMENT (CONTRIBUTIONS  
PLANS) AMENDMENT BILL 1991

Schedule of the amendments referred to in the Legislative  
Assembly's Message of 11 December 1991

  
Clerk of the Legislative Assembly

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No. 1 Page 2, Schedule 1 (1) (b). From proposed section 94 (7), omit "the day", insert instead:

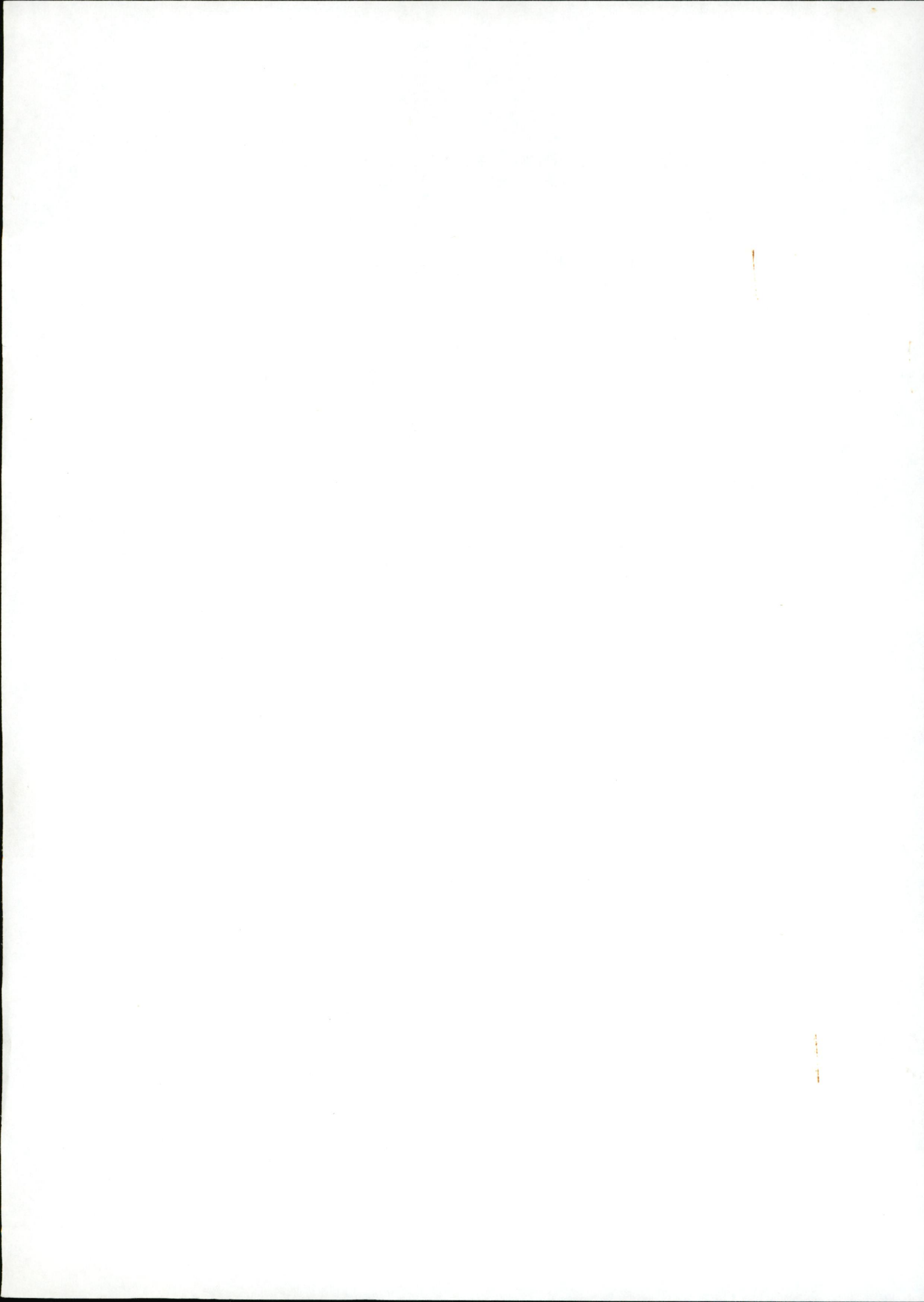
"the first anniversary of the date of assent to the Environmental Planning and Assessment (Contributions Plans) Amendment Act 1991 or such earlier day as may be".

No. 2 Page 4, Schedule 1 (2). After proposed section 94AB (3), insert:

(4) A draft contributions plan must be publicly exhibited for a period of not less than 28 days.

Examined  
WENDY MACHIN  
Chairman of Committees

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**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(CONTRIBUTIONS PLANS) AMENDMENT ACT 1991 No. 64**

**NEW SOUTH WALES**

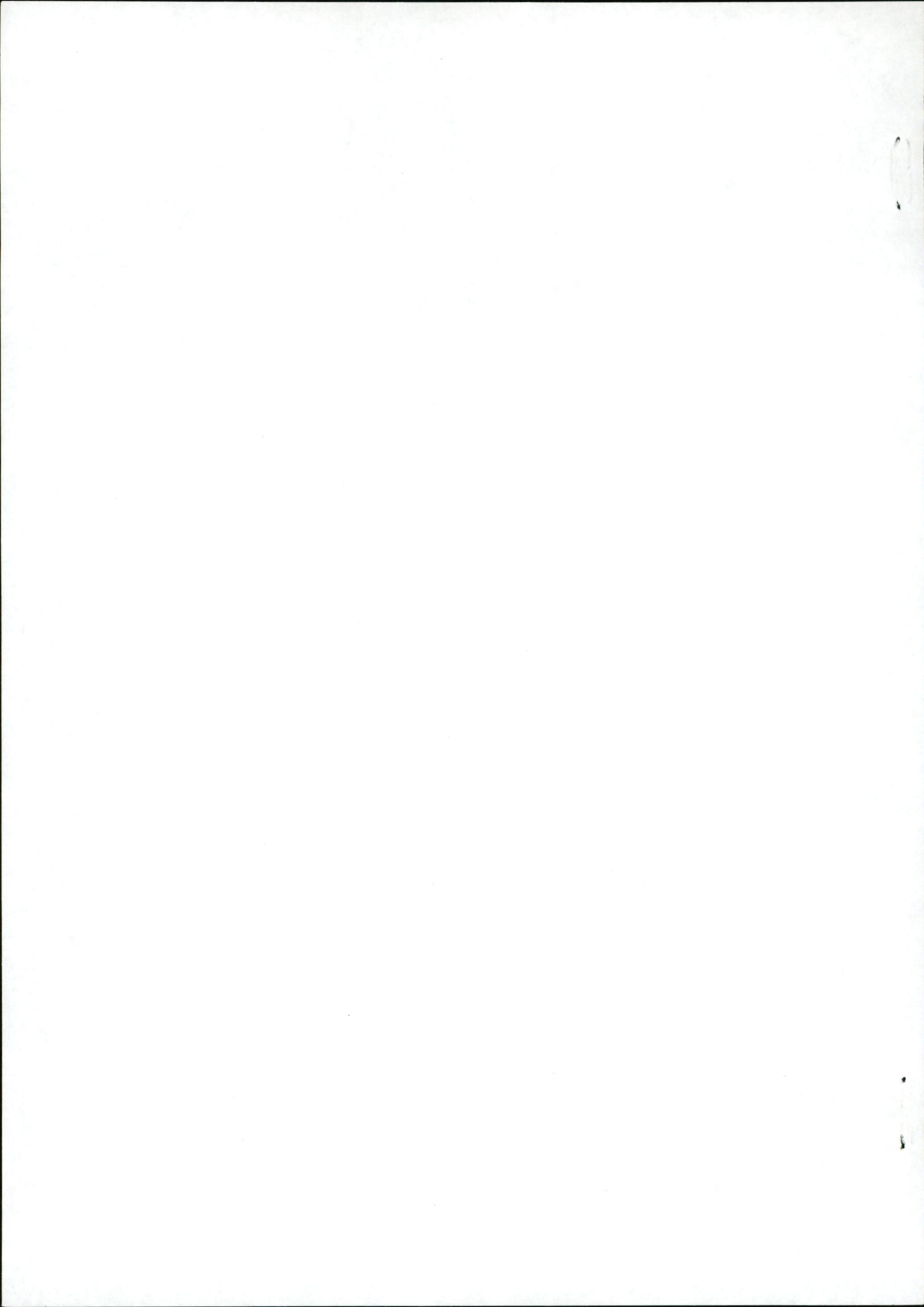


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Environmental Planning and Assessment Act 1979 No. 203

**SCHEDULE 1—AMENDMENTS**

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**ENVIRONMENTAL PLANNING AND ASSESSMENT  
(CONTRIBUTIONS PLANS) AMENDMENT ACT 1991 No. 64**

**NEW SOUTH WALES**



**Act No. 64, 1991**

An Act to amend the Environmental Planning and Assessment Act 1979 with respect to conditions of development consent concerning public amenities and public services; and for related purposes. [Assented to 17 December 1991]

*Environmental Planning and Assessment (Contributions Plans) Amendment 1991*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Environmental Planning and Assessment (Contributions Plans) Amendment Act 1991.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Environmental Planning and Assessment Act 1979  
No. 203**

3. The Environmental Planning and Assessment Act 1979 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 94 (**Payment towards provision or improvement of amenities or services**):

(a) From section 94 (3), omit “in trust”, insert instead “(and any additional amount earned from its investment)”.

(b) After section 94 (6), insert:

(7) When granting consent to a development application made on or after the first anniversary of the date of assent to the Environmental Planning and Assessment (Contributions Plans) Amendment Act 1991 or such earlier day as may be fixed by proclamation for the purposes of this subsection, a council may impose a condition referred to in this section only if it is of a kind allowed by, and is determined in accordance with, a contributions plan approved under section 94AB.

(8) A condition of a kind allowed by a contributions plan may be disallowed or amended by the Court on appeal because it is unreasonable, even if it was determined in accordance with the plan.

SCHEDULE 1—AMENDMENTS—*continued*

(2) Sections 94AA–94AC:

After section 94, insert:

**Section 94 conditions imposed by the Minister or Director**

94AA. (1) The Minister or the Director, as the consent authority determining a development application, may impose conditions referred to in section 94 if the application relates:

- (a) to land within a growth centre; or
- (b) to other land within a single area.

(2) Section 94, as modified by this section, applies to the Minister or the Director determining such a development application as consent authority.

(3) When the development application relates to land within a growth centre, section 94 applies as if references in that section to the area were references to the growth centre.

(4) Before imposing any condition referred to in section 94, the Minister or the Director must have regard to any contributions plan approved under section 94AB that applies to the whole or any part of the growth centre or area in which the relevant land is situated.

(5) The Minister or the Director may impose a condition referred to in section 94 even though it is not of a kind allowed by, or not in accordance with, a contributions plan.

(6) Any monetary contribution paid in accordance with a condition referred to in section 94 imposed by the Minister or the Director:

- (a) must be paid by the Minister or Director to the corporation for the growth centre or the council of the area concerned; and
- (b) must (together with any additional amount earned from its investment) be applied within a reasonable time for the purpose for which it was levied.

(7) This section applies to the Minister as consent authority whether or not the Minister is consent authority pursuant to section 101.

SCHEDULE 1—AMENDMENTS—*continued*

(8) In this section, “**growth centre**” means:

- (a) a growth centre, within the meaning of the Growth Centres (Development Corporations) Act 1974; or
- (b) a designated area, within the meaning of the Albury-Wodonga Development Act 1974.

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94AB. (1) A council may prepare and approve a contributions plan for the purpose of imposing conditions referred to in section 94.

(2) One or more contributions plans may be made for all or any part of the council’s area and in relation to one or more public amenities or public services.

(3) The council must not approve a contributions plan that is inconsistent with any direction given to it under section 94A.

(4) A draft contributions plan must be publicly exhibited for a period of not less than 28 days.

(5) Except as provided by this section, the format, structure, subject-matter and procedures for the preparation, public exhibition, approval, amendment and repeal of a contributions plan are to be as prescribed.

(6) It is to be presumed, in the absence of evidence to the contrary, that all conditions and preliminary steps precedent to the making of a contributions plan have been complied with and performed.

**Contributions plans—judicial notice, validity etc.**

94AC. (1) Judicial notice is to be taken of a contributions plan and of the date on which the plan came into effect.

(2) The validity of any procedure required to be followed in making or approving a contributions plan is not to be questioned in any legal proceedings except those commenced in the Court by any person within 3 months of the date on which the plan came into effect.



*Environmental Planning and Assessment (Contributions Plans) Amendment 1991*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) The amendment or repeal, whether in whole or in part, of a contributions plan does not affect the previous operation of the plan or anything duly done under the plan.

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[Minister's second reading speech made in—  
*Legislative Assembly on 10 December 1991*  
*Legislative Council on 19 November 1991*]

