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Environmental Planning and Assessment Regulation 2000

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Part 4

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Part 4 Development contributions

Division 1 Preliminary

25A Planning authorities

Pursuant to paragraph (e) of the definition of *planning authority* in section 93C of the Act, all public authorities are declared to be planning authorities for the purposes of Division 6 of Part 4 of the Act.

Division 1A Planning agreements

25B Form and subject-matter of planning agreements

- (1) A planning agreement must:
- (a) be in writing, and
 - (b) be signed by the parties to the agreement.

Note. Section 93F (10) of the Act requires a planning agreement to conform with the Act, environmental planning instruments and development consents applying to the relevant land.

- (2) The Director-General may from time to time issue practice notes to assist parties in the preparation of planning agreements.

Note. Under section 93K of the Act the Minister may give planning authorities directions on requirements with respect to planning agreements.

25C Making, amendment and revocation of agreements

- (1) A planning agreement is not entered into until it is signed by all the parties to the agreement.

Note. Section 93G of the Act provides that the agreement cannot be entered into until public notice of the proposed agreement has been given.

- (2) A planning agreement may specify that it does not take effect until:
- (a) if the agreement relates to a proposed change to an environmental planning instrument—the date the change is made, or
 - (b) if the agreement relates to a development application or proposed development application—the date consent to the application is granted.

- (3) A planning agreement may be amended or revoked by further agreement in writing signed by the parties to the agreement (including by means of a subsequent planning agreement).

25D Public notice of planning agreements

- (1) If a planning authority proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a development application or a project application, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation is given:
- (a) in the case of an agreement in connection with a development application:
- (i) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of the development application that is required to be given by a consent authority for a development application by or under the Act, or
- (ii) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of the development application that is required to be given by a consent authority for a development application by or under the Act and in the manner determined by the planning authorities that are parties to the agreement, or
- (b) in the case of an agreement in connection with a project application:
- (i) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of an environmental assessment in connection with the application that is required to be given by the Director-General by or under the Act, or
- (ii) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of an environmental assessment for the project that is required to be given by the Director-General by or under the Act and in the manner determined by the planning authorities that are parties to the agreement.
- (1A) If a planning authority proposes to enter into a planning agreement, or an agreement to amend or revoke a planning agreement, in connection with a proposed change to a local environmental plan, the planning authority is to ensure that public notice of the proposed agreement, amendment or revocation is given:
- (a) if practicable, as part of and contemporaneously with, and in the same manner as, any public notice of the relevant planning proposal that is required under Part 3 of the Act, or
- (b) if it is not practicable for notice to be given contemporaneously, as soon as possible after any public notice of the relevant planning proposal that is required under Part 3 of the Act and in the manner determined by the planning authorities that are parties to the agreement.
- (2) (Repealed)
- (2A) In the case of a planning agreement of a kind other than an agreement referred to in subclause (1), (1A) or (2) of which public notice is required to be given under section 93G of the Act, the Director-General is to ensure that public notice of the proposed agreement, amendment or revocation is given not less than 28 days before the agreement is entered into or amended or revoked and in the manner determined by the planning authorities that are parties to the agreement.

- (3) The public notice of a proposed agreement, amendment or revocation must specify the arrangements relating to inspection by the public of copies of the proposed agreement, amendment or revocation.
- (4) In this clause:

project application has the same meaning as it has in Part 1A.

Note. Section 93G of the Act requires a copy of the proposed agreement, amendment or revocation to be made available for inspection by the public for a period of not less than 28 days.

25E Explanatory note

- (1) A planning authority proposing to enter into a planning agreement, or an agreement that revokes or amends a planning agreement, must prepare a written statement (referred to in this Division as an *explanatory note*):
- (a) that summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and
 - (b) that contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.
- (2) Without limiting subclause (1), an explanatory note must:
- (a) identify how the agreement, amendment or revocation promotes the public interest and one or more of the objects of the Act, and
 - (b) if the planning authority is a development corporation, identify how the agreement, amendment or revocation promotes one or more of its responsibilities under the *Growth Centres (Development Corporations) Act 1974*, and
 - (c) if the planning authority is a public authority constituted by or under an Act, identify how the planning agreement, amendment or revocation promotes one or more of the objects (if any) of the Act by or under which it is constituted, and
 - (d) if the planning authority is a council, identify how the agreement, amendment or revocation promotes one or more of the elements of the council's charter under section 8 of the *Local Government Act 1993*, and
 - (e) identify a planning purpose or purposes served by the agreement, amendment or revocation, and contain an assessment of whether the agreement, amendment or revocation provides for a reasonable means of achieving that purpose, and
 - (f) identify whether the agreement, amendment or revocation conforms with the planning authority's capital works program (if any), and
 - (g) state whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.
- (3) The explanatory note is to be prepared jointly with the other parties proposing to enter into the planning agreement.
- (4) However, if 2 or more planning authorities propose to enter into a planning agreement, an explanatory note may include separate assessments prepared by the planning authorities in relation to matters affecting only one of the planning authorities, or affecting those planning authorities in a different manner.

- (5) A copy of the explanatory note must be exhibited with the copy of the proposed agreement, amendment or revocation when it is made available for inspection by the public in accordance with the Act.
- (6) If a council is not a party to a planning agreement that applies to the area of the council, a copy of the explanatory note must be provided to the council when a copy of the agreement is provided to the council under section 93G (4) of the Act.
- (7) A planning agreement may provide that the explanatory note is not to be used to assist in construing the agreement.

25F Councils to facilitate public inspection of relevant planning agreements

- (1) A council must keep a planning agreement register.
- (2) The council must record in the register a short description of any planning agreement (including any amendment) that applies to the area of the council, including the date the agreement was entered into, the names of the parties and the land to which it applies.
- (3) A council must make the following available for public inspection (free of charge) during the ordinary office hours of the council:
 - (a) the planning agreement register kept by the council,
 - (b) copies of all planning agreements (including amendments) that apply to the area of the council,
 - (c) copies of the explanatory notes relating to those agreements or amendments.
- (4) In this clause, *planning agreement* includes a planning agreement to which the council is not a party but which has been provided to the council under the Act.

25G Director-General to facilitate public inspection of relevant planning agreements

- (1) The Director-General must keep a planning agreement register.
- (2) The Director-General must record in the register a short description of any planning agreement (including any amendment) entered into by the Minister, including the date the agreement was entered into, the names of the parties and the land to which it applies.
- (3) The Director-General must make the following available for public inspection (free of charge) during the ordinary office hours of the Department:
 - (a) the planning agreement register kept by the Director-General,
 - (b) copies of all planning agreements (including amendments) to which the Minister is a party,
 - (c) copies of the explanatory notes relating to those agreements or amendments.

25H Other planning authorities to facilitate public inspection of relevant planning agreements

A planning authority (not being a council or the Minister) must make the following available for public inspection (free of charge) during the ordinary office hours of the planning authority:

- (a) copies of all planning agreements (including amendments) to which it is a party,

- (b) copies of the explanatory notes relating to those agreements or amendments.

Division 1B Development consent contributions

25I Indexation of monetary section 94 contribution—recoupment of costs

For the purposes of section 94 (3) of the Act, the cost of providing public amenities or public services is to be indexed quarterly or annually (as specified in the relevant contributions plan) in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

25J Section 94A levy—determination of proposed cost of development

- (1) The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 94A levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:
 - (a) if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,
 - (b) if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,
 - (c) if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.
- (2) For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.
- (3) The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:
 - (a) the cost of the land on which the development is to be carried out,
 - (b) the costs of any repairs to any building or works on the land that are to be retained in connection with the development,
 - (c) the costs associated with marketing or financing the development (including interest on any loans),
 - (d) the costs associated with legal work carried out or to be carried out in connection with the development,
 - (e) project management costs associated with the development,
 - (f) the cost of building insurance in respect of the development,
 - (g) the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),
 - (h) the costs of commercial stock inventory,

- (i) any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law,
 - (j) the costs of enabling access by disabled persons in respect of the development,
 - (k) the costs of energy and water efficiency measures associated with the development,
 - (l) the cost of any development that is provided as affordable housing,
 - (m) the costs of any development that is the adaptive reuse of a heritage item.
- (4) The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date the levy is required to be paid.
- (5) To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.

25K Section 94A levy—maximum percentage

- (1) The maximum percentage of the proposed cost of carrying out development that may be imposed by a levy under section 94A of the Act is:
- (a) in the case of development other than development specified in paragraph (b):
 - (i) if the proposed cost of carrying out the development is up to and including \$100,000—nil, or
 - (ii) if the proposed cost of carrying out the development is more than \$100,000 and up to and including \$200,000—0.5 per cent of that cost, or
 - (iii) if the proposed cost of carrying out the development is more than \$200,000—1 per cent of that cost, or
 - (b) in the case of development on land specified in the Table to this paragraph—the percentage specified in Column 2 of the Table opposite the relevant proposed cost of carrying out the development listed in Column 1 of the Table.

Table

Column 1	Column 2
Proposed cost of carrying out the development	Maximum percentage of the levy
Land within the Neighbourhood Centre, Commercial Core, Mixed Use or Enterprise Corridor zone under <u>Liverpool City Centre Local Environmental Plan 2007</u>	
Less than \$1,000,000	Nil
\$1,000,000 or more	3 per cent
Land within the High Density Residential or Light Industrial zone under <u>Liverpool City Centre Local Environmental Plan 2007</u>	
Less than \$1,000,000	Nil
\$1,000,000 or more	2 per cent
Land within the Commercial Core zone under <u>Wollongong City Centre Local Environmental Plan 2007</u>	
Up to and including \$250,000	Nil
More than \$250,000	2 per cent

Land identified on the Land Application Map under the Gosford City Centre Local Environmental Plan 2007

Up to and including \$250,000	Nil
More than \$250,000	4 per cent

Land identified on the Land Application Map under Parramatta City Centre Local Environmental Plan 2007

Up to and including \$250,000	Nil
More than \$250,000	3 per cent

Land identified on the Land Application Map under Newcastle City Centre Local Environmental Plan 2008

Up to and including \$100,000	Nil
More than \$100,000, up to and including \$200,000	0.5 per cent
More than \$200,000, up to and including \$250,000	1 per cent
More than \$250,000	3 per cent

Land identified on the Land Application Map under Burwood Local Environmental Plan (Burwood Town Centre) 2010

Up to and including \$250,000	Nil
More than \$250,000	4 per cent

Land identified in map 1 to the Chatswood Central Business District (CBD) Section 94A Development Contributions Plan 2011, as adopted by Willoughby City Council on 21 November 2011

Up to and including \$100,000	Nil
More than \$100,000, up to and including \$200,000	0.5 per cent
More than \$200,000, up to and including \$250,000	1 per cent
More than \$250,000	3 per cent

- (2) This clause is subject to any direction given by the Minister under section 94E (1) (d) of the Act.

Division 1C Preparation of contributions plans

26 In what form must a contributions plan be prepared?

(cf clause 25 of EP&A Regulation 1994)

- (1) A contributions plan must be prepared having regard to any relevant practice notes adopted for the time being by the Director-General, copies of which are available for inspection and purchase from the offices of the Department.
- (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.
- (2A) Despite subclause (2), a contributions plan may be made for land outside the council's area for the purposes of a condition referred to in section 94CA of the Act.
- (3) The council must not approve a contributions plan that is inconsistent with any direction given to it under section 94E of the Act.
- (4) A draft contributions plan must be publicly exhibited for a period of at least 28 days.

27 What particulars must a contributions plan contain?

(cf clause 26 of EP&A Regulation 1994)

- (1) A contributions plan must include particulars of the following:
 - (a) the purpose of the plan,

- (b) the land to which the plan applies,
 - (c) the relationship between the expected types of development in the area to which the plan applies and the demand for additional public amenities and services to meet that development,
 - (d) the formulas to be used for determining the section 94 contributions required for different categories of public amenities and services,
 - (e) the section 94 contribution rates for different types of development, as specified in a schedule to the plan,
 - (f) if the plan authorises the imposition of a section 94A condition:
 - (i) the percentage of the section 94A levy and, if the percentage differs for different types of development, the percentage of the levy for those different types of development, as specified in a schedule to the plan, and
 - (ii) the manner (if any) in which the proposed cost of carrying out the development, after being determined by the consent authority, is to be adjusted to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date of that determination and the date the levy is required to be paid,
 - (g) the council's policy concerning the timing of the payment of monetary section 94 contributions, section 94A levies and the imposition of section 94 conditions or section 94A conditions that allow deferred or periodic payment,
 - (h) a map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging (whether by reference to dates or thresholds),
 - (i) if the plan authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes, the priorities for the expenditure of the contributions or levies, particularised by reference to the works schedule.
- (2) In determining the section 94 contribution rates or section 94A levy percentages for different types of development, the council must take into consideration the conditions that may be imposed under section 80A (6) (b) of the Act or section 97 (1) (b) of the Local Government Act 1993.
- (3) A contributions plan must not contain a provision that authorises monetary section 94 contributions or section 94A levies paid for different purposes to be pooled and applied progressively for those purposes unless the council is satisfied that the pooling and progressive application of the money paid will not unreasonably prejudice the carrying into effect, within a reasonable time, of the purposes for which the money was originally paid.

Division 2 Public participation

28 Draft contributions plan must be publicly exhibited

(cf clause 27 of EP&A Regulation 1994)

Following the preparation of a draft contributions plan, the council:

- (a) must give public notice in a local newspaper of the places, dates and times for inspection of the draft plan, and

- (b) must publicly exhibit at the places, on the dates and during the times set out in the notice:
 - (i) a copy of the draft plan, and
 - (ii) a copy of any supporting documents, and
- (c) must specify in the notice the period during which submissions about the draft plan may be made to the council (which must include the period during which the plan is being publicly exhibited).

29 Copies of draft contributions plans to be publicly available

(cf clause 28 of EP&A Regulation 1994)

Copies of the draft contributions plan, and of any supporting documents, are to be made available to interested persons, either free of charge or on payment of reasonable copying charges.

30 Who may make submissions about a draft contributions plan?

(cf clause 29 of EP&A Regulation 1994)

Any person may make written submissions to the council about the draft contributions plan during the relevant submission period.

Division 3 Approval of contributions plans

31 Approval of contributions plan by council

(cf clause 30 of EP&A Regulation 1994)

- (1) After considering any submissions about the draft contributions plan that have been duly made, the council:
 - (a) may approve the plan in the form in which it was publicly exhibited, or
 - (b) may approve the plan with such alterations as the council thinks fit, or
 - (c) may decide not to proceed with the plan.
- (2) The council must give public notice of its decision in a local newspaper within 28 days after the decision is made.
- (3) Notice of a decision not to proceed with a contributions plan must include the council's reasons for the decision.
- (4) A contributions plan comes into effect on the date that public notice of its approval is given in a local newspaper, or on a later date specified in the notice.

Division 4 Amendment and repeal of contributions plans

32 How may a contributions plan be amended or repealed?

(cf clause 31 of EP&A Regulation 1994)

- (1) A council may amend a contributions plan by a subsequent contributions plan.
- (2) A council may repeal a contributions plan:

- (a) by a subsequent contributions plan, or
 - (b) by public notice in a local newspaper of its decision to repeal the plan.
- (3) A council may make the following kinds of amendments to a contributions plan without the need to prepare a new contributions plan:
- (a) minor typographical corrections,
 - (b) changes to the rates of section 94 monetary contributions set out in the plan to reflect quarterly or annual variations to:
 - (i) readily accessible index figures adopted by the plan (such as a Consumer Price Index), or
 - (ii) index figures prepared by or on behalf of the council from time to time that are specifically adopted by the plan,
 - (c) the omission of details concerning works that have been completed.

33 Procedure for repealing a contributions plan by public notice

(cf clause 32 of EP&A Regulation 1994)

- (1) Before repealing a contributions plan by public notice, the council must give public notice in a local newspaper:
 - (a) of its intention to repeal the contributions plan, and
 - (b) of its reasons for doing so.
- (2) Publication of the notice of intention must take place at least 14 days before publication of the notice of repeal.
- (3) The repeal of a contributions plan by public notice in a local newspaper takes effect on the date of publication of the notice.

33A Review of contributions plan

- (1) A council is required to keep a contributions plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) A council is also to consider any submissions about contributions plans received from public authorities or the public.

Division 5 Accounting

34 Councils must maintain contributions register

(cf clause 33 of EP&A Regulation 1994)

- (1) A council that imposes section 94 conditions or section 94A conditions on development consents must maintain a contributions register.
- (2) The council must record the following details in the register:
 - (a) particulars sufficient to identify each development consent for which any such condition has been imposed,
 - (b) the nature and extent of the section 94 contribution or section 94A levy required by any such condition for each public amenity or service,

- (c) the contributions plan under which any such condition was imposed,
- (d) the date or dates on which any section 94 contribution or section 94A levy required by any such condition was received, and its nature and extent.

35 Accounting for contributions and levies

(cf clause 34 of EP&A Regulation 1994)

- (1) A council must maintain accounting records that allow monetary section 94 contributions, section 94A levies, and any additional amounts earned from their investment, to be distinguished from all other money held by the council.
- (2) The accounting records for a contributions plan must indicate the following:
 - (a) the various kinds of public amenities or services for which expenditure is authorised by the plan,
 - (b) the monetary section 94 contributions or section 94A levies received under the plan, by reference to the various kinds of public amenities or services for which they have been received,
 - (ba) in respect of section 94 contributions or section 94A levies paid for different purposes, the pooling or progressive application of the contributions or levies for those purposes, in accordance with any requirements of the plan or any ministerial direction under Division 6 of Part 4 of the Act,
 - (c) the amounts spent in accordance with the plan, by reference to the various kinds of public amenities or services for which they have been spent.
- (3) A council must disclose the following information for each contributions plan in the notes to its annual financial report:
 - (a) the opening and closing balances of money held by the council for the accounting period covered by the report,
 - (b) the total amounts received by way of monetary section 94 contributions or section 94A levies during that period, by reference to the various kinds of public amenities or services for which they have been received,
 - (c) the total amounts spent in accordance with the contributions plan during that period, by reference to the various kinds of public amenities or services for which they have been spent,
 - (d) the outstanding obligations of the council to provide public amenities or services, by reference to the various kinds of public amenities or services for which monetary section 94 contributions or section 94A levies have been received during that or any previous accounting period.

36 Councils must prepare annual statements

(cf clause 35 of EP&A Regulation 1994)

- (1) As soon as practicable after the end of each financial year, a council must prepare an annual statement for the contributions plans in force in its area.
- (2) The annual statement must disclose, for each contributions plan, the information required by this Division to appear in the notes to its annual financial report.

Division 6 Public access

37 Councils must keep certain records available for public inspection

(cf clause 36 of EP&A Regulation 1994)

- (1) A council must make the following documents available for inspection:
 - (a) each of its current contributions plans,
 - (b) each of its annual statements,
 - (c) its contributions register.
- (2) The documents must be available at the council's principal office, free of charge, during the council's ordinary office hours.
- (3) Subject to section 428 of the *Local Government Act 1993*, the annual statement may be included in, or form part of, the annual report prepared by the council under that section.

38 Copies of contributions plans to be publicly available

(cf clause 37 of EP&A Regulation 1994)

A council must make the following documents available for copying, either free of charge or on payment of reasonable copying charges:

- (a) each of its current contributions plans,
- (b) each document referred to in any such contributions plan that is held by the council.

Note. This clause does not require a council to supply certified copies of any document. Certified copies are supplied under section 150 of the Act on payment of a prescribed fee. The fee for a certified copy is prescribed by clause 262.

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