



New South Wales

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning and Public Spaces

Explanatory note

The object of this Regulation is to make amendments to the *Environmental Planning and Assessment Regulation 2000* consequent on the commencement of the *Environmental Planning and Assessment (Infrastructure Contributions) Act 2021* as follows—

- (a) to provide for the giving of public notice and the public exhibition of planning agreements,
- (b) to specify the particulars that must be included in the annual report of a planning authority that has entered into a planning agreement,
- (c) to specify the development and land for which a local infrastructure condition or local levy condition may be imposed,
- (d) to provide for the indexation of the cost of providing public amenities and public services and contributions relating to local infrastructure conditions,
- (e) to make provision for land value contributions, including the method of calculating land value contributions, applications for land value contribution certificates and the content of land value contribution certificates,
- (f) to prescribe persons licensed under the *Conveyancers Licensing Act 2003* and Australian legal practitioners as authorised persons who may endorse an instrument of transfer of land in a land value contributions area,
- (g) to prescribe the maximum levy rates for different types of development that may be specified in a contributions plan that authorises the imposition of local levy conditions,
- (h) to make provision for the calculation of levy amounts that are required to be paid under local levy conditions,
- (i) to provide for the indexation of maximum levy rates and levy amounts that are required to be paid under local levy conditions,
- (j) to specify the information that must be included in contributions plans,
- (k) to require contributions plans to be exhibited and notified on the NSW planning portal,
- (l) to specify the amendments that may be made to a contributions plan without preparing a new plan or exhibiting the amendments,

public consultation draft

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 [NSW]
Explanatory note

- (m) to require councils to review contributions plans at least once every 4 years,
- (n) to require councils to maintain a local infrastructure contributions register and affordable housing contributions registers,
- (o) to require certain information relating to affordable housing to be included in the annual reports of councils,
- (p) to specify the conditions to which a complying development certificate is subject if the certificate authorises development for which a local infrastructure condition or local levy condition may be imposed,
- (q) to require the council to approve a contributions plan for certain land identified in an environmental planning instrument before determining certain development applications for development on the land, or to determine the development application 6 months after the land is identified,
- (r) to require a planning certificate to include the name of a State environmental planning policy that imposes a regional infrastructure contribution on land within the boundaries of a region to which the contribution applies if the certificate relates to the land,
- (s) to make savings and transitional provisions.

DRAFT

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021

under the

Environmental Planning and Assessment Act 1979

1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021*.

2 Commencement

This Regulation commences on 1 July 2022 and is required to be published on the NSW legislation website.

DRAFT

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 25D Public notice of planning agreements

Omit clause 25D(2A) and (3). Insert instead—

- (2) For an agreement of another kind, the Planning Secretary must ensure public notice of the proposed agreement, amendment or revocation is given—
 - (a) not less than 28 days before the agreement is entered into or amended or revoked, and
 - (b) in a way agreed to by the planning authorities that are parties to the agreement.

[2] Clause 25D, note

Omit the note.

[3] Clause 25DA

Insert after clause 25D—

25DA Public exhibition of planning agreements

- (1) If a planning authority proposes to enter into a planning agreement, in connection with a development application or a change to a local environmental plan, the draft planning agreement must be exhibited at the same time and in the same way as the exhibition of—
 - (a) the development application to which the proposal relates, or
 - (b) the planning proposal for the change to the local environmental plan to which the proposal relates.
- (2) If it is not practicable for the draft planning agreement to be exhibited as required under this clause, the draft planning agreement must be exhibited—
 - (a) as soon as possible, and
 - (b) in a way agreed to by the planning authorities that are parties to the agreement.
- (3) A draft planning agreement must be made available for public inspection on the NSW planning portal.

[4] Clause 25HA

Insert after clause 25H—

25HA Information about planning agreements—annual reports

A planning authority that has entered into a planning agreement must, while it remains in force, include in its annual report particulars of—

- (a) compliance with the planning agreement during the year to which the report relates, and
- (b) the effect of the planning agreement during the year to which the report relates.

[5] Part 4, Division 1B

Omit the Division. Insert instead—

Division 1B Local infrastructure contributions

Subdivision 1 Preliminary

25I Definitions

In this Division—

LVI means the Land Value Index produced and maintained by the Valuer-General.

PPI means the index number of the Producer Price Index (Road and Bridge Construction (NSW)) produced by the Australian Bureau of Statistics.

25J Development and land in relation to which local infrastructure conditions and local levy conditions may be imposed

- (1) A local infrastructure condition and local levy condition must not be imposed on a development consent in relation to development for the following purposes—
 - (a) public housing within the meaning of the *Housing Act 2001*,
 - (b) seniors housing carried out by or on behalf of a social housing provider,
 - (c) affordable housing carried out by or on behalf of a social housing provider,
 - (d) development carried out by or on behalf of the State for the purposes of schools, health services facilities, emergency services facilities or public administration buildings.
- (2) A local infrastructure condition and local levy condition must not be imposed on a development consent in relation to development on land within a Lease Area within the meaning of *State Environmental Planning Policy (Three Ports) 2013*.
- (3) A local levy condition must not be imposed on a development consent if—
 - (a) a contribution has been made under a local infrastructure condition for the subdivision of the land, and
 - (b) the development, other than the subdivision for which the contribution has been made, will not, or is not likely to, increase the demand for public amenities or public services.
- (4) A contributions plan may specify development or land in relation to which a local infrastructure condition or local levy condition must not be imposed.
- (5) In this clause—

registered community housing provider has the same meaning as in the *Community Housing Providers (Adoption of National Law) Act 2012*, section 13.

social housing provider means the following—

 - (a) Services Australia,
 - (b) the Land and Housing Corporation,
 - (c) a registered community housing provider,
 - (d) the Aboriginal Housing Office,
 - (e) a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,
 - (f) a local government authority that provides affordable housing,

- (g) a not-for-profit organisation that is a direct provider of rental housing to tenants.

Subdivision 2 Indexation of costs and contributions relating to local infrastructure conditions

25K Costs include interest on loans used to provide public amenities and public services

The cost of providing public amenities and public services includes the cost of interest on a loan or borrowings used to provide the amenities or services.

25L Indexation of cost of providing public amenities and public services

- (1) A contributions plan must provide for the indexation of the cost of providing each public amenity or public service identified in the plan for which a local infrastructure condition may be imposed.
- (2) The cost of providing a public amenity or public service includes the cost of acquiring land in a land value contributions area that is identified in a contributions plan as being required for a public purpose.
- (3) The indexation must occur on 1 July in each year after the contributions plan is made.
- (4) The cost of providing a public amenity or public service must be indexed using the following formula—

$$\textit{indexed cost} = \textit{cost} \times \frac{A}{B}$$

where—

A is the index number of—

- (a) for the cost of acquiring land, other than interest on a loan or borrowings used to acquire the land, that is yet to be incurred when the contributions plan is made—
 - (i) the most recently published LVI as at 1 July in the year in which the indexation occurs, or
 - (ii) if the LVI is not available for a period to which the indexation relates—the PPI for the quarter ending 31 March in the year in which the indexation occurs, or
- (b) otherwise—the PPI for the quarter ending 31 March in the year in which the indexation occurs.

B is the index number of—

- (a) for a contributions plan made before 1 July in a year—
 - (i) for the cost of acquiring land, other than interest on a loan or borrowings used to acquire the land, that is yet to be incurred when the contributions plan is made—the most recently published LVI as at 1 July in the previous year, or
 - (ii) otherwise—the PPI for the quarter ending 31 March in the previous year, or
- (b) for a contributions plan made on or after 1 July in a year—
 - (i) for the cost of acquiring land, other than interest on a loan or borrowings used to acquire the land, that is yet to be incurred when the contributions plan is made—the most recently published LVI as at 1 July in the same year, or

- (ii) otherwise—the PPI for the quarter ending 31 March in the same year.

25M Indexation of contribution amounts and rates

- (1) A contributions plan must provide for the following in relation to a contribution for which a local infrastructure condition may be imposed—
 - (a) for a contribution other than a land value contribution—
 - (i) the indexation of the rate for the contribution specified in the plan for each public amenity or public service (the **contribution rate**) in the same way as the indexation of the cost of providing each public amenity or public service, and
 - (ii) for the purpose of calculating a contribution at the time of payment—the indexation of the amount of the contribution specified in a condition of consent in the same way as the indexation of the contribution rate,
 - (b) for a land value contribution—the indexation of the amount of the land value contribution specified in a condition of consent in accordance with—
 - (i) the LVI, or
 - (ii) if the LVI is not available for a period to which the indexation relates—the PPI.
- (2) If the adjusted contribution amount or rate is not a multiple of 1 dollar, the amount must be rounded to the nearest multiple of 1 dollar and an amount of 50 cents must be rounded up.
- (3) If an adjusted contribution amount or rate is less than the amount or rate that currently applies (the **current amount**), the current amount or rate continues to apply instead.
- (4) For the purpose of calculating a contribution at the time of payment, the base index number is the relevant index number used in adjusting the cost of the public amenity or public service to which the contribution relates at the time the condition was imposed.
- (5) In this clause—
relevant index number means the index number referred to as A in the formula in clause 25L.

Subdivision 3 Land value contributions

25N Maximum land value contribution percentage—the Act, s 7.18A(f)

The maximum land value contribution that may be required is 20 per cent of the total area of land in a land value contributions area.

25O Calculation of land value contribution—the Act, s 7.18A(e) and 7.16D(3)

- (1) The amount of a land value contribution must be determined by multiplying the public purpose land to which the contribution relates, expressed as a percentage of the land value contributions area, by the land value of the land to which the contribution relates, as most recently determined by the Valuer-General in accordance with the *Valuation of Land Act 1916*, section 6A.
- (2) In this clause—
public purpose land means land identified in a contributions plan—

- (a) as being required for a public purpose, and
- (b) for which a land value contribution is required.

25P Land value contribution certificates—the Act, s 7.16D

- (1) An application for a land value contribution certificate must—
 - (a) be in the form approved by the Planning Secretary and made available on the NSW planning portal, and
 - (b) be lodged on the NSW planning portal.
- (2) The prescribed fee for the issue of a certificate is \$53.
- (3) The council must, within 5 days of receiving the application, issue a land value contribution certificate.
- (4) A land value contribution certificate expires 12 months after it is issued.
- (5) The certificate must include the following information—
 - (a) the date on which the certificate is issued,
 - (b) the name of the council issuing the certificate,
 - (c) the name of the contributions plan applying to the land,
 - (d) a description of the land value contributions area concerned,
 - (e) a description of the land to which the certificate relates,
 - (f) the most recent land value of the land as determined by the Valuer-General under the *Valuation of Land Act 1916*,
 - (g) the date on which the certificate expires.

Note—The certificate must also include the information set out in the Act, section 7.16D(5).

25Q Authorised persons—the Act, s 7.16E(2)

For the purposes of the Act, section 7.16E(2), definition of *authorised person*, the following persons are authorised persons—

- (a) a person licensed under the *Conveyancers Licensing Act 2003*,
- (b) an Australian legal practitioner.

Subdivision 4 Levies imposed under local levy conditions

25R Definitions

- (1) In this Division—

adjusted maximum levy rate means the following as adjusted in accordance with clause 25V—

 - (a) for commercial and industrial development—the maximum levy rate set out in the table to clause 25T, or
 - (b) for residential development—the maximum levy rate set out in the table to clause 25S, or
 - (c) for solar and wind electricity generation—the maximum levy rate set out in clause 25U.

Greater Sydney—Central means the land comprising the following local government areas—

- (a) Blacktown,
- (b) Canterbury-Bankstown,

public consultation draft

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- (c) Cumberland,
- (d) Georges River,
- (e) Parramatta,
- (f) The Hills,
- (g) Sutherland Shire.

Greater Sydney—East means the land comprising the following local government areas—

- (a) Bayside,
- (b) Burwood,
- (c) Canada Bay,
- (d) City of Sydney,
- (e) Hornsby,
- (f) Hunters Hill,
- (g) Inner West,
- (h) Ku-ring-gai,
- (i) Lane Cove,
- (j) Mosman,
- (k) North Sydney,
- (l) Northern Beaches,
- (m) Randwick,
- (n) Ryde,
- (o) Strathfield,
- (p) Waverley,
- (q) Willoughby,
- (r) Woollahra.

Greater Sydney—West means the land comprising the following local government areas—

- (a) Blue Mountains,
- (b) Camden,
- (c) Campbelltown,
- (d) Fairfield,
- (e) Hawkesbury,
- (f) Liverpool,
- (g) Penrith,
- (h) Wollondilly.

maximum levy rate means the following—

- (a) for commercial and industrial development—the maximum levy rate set out in the table to clause 25T, or
- (b) for residential development—the maximum levy rate set out in the table to clause 25S, or
- (c) for solar and wind electricity generation—the maximum levy rate set out in clause 25U, including the amount specified in clause 25U(2).

Regional NSW means the State other than Greater Sydney—Central, Greater Sydney—East and Greater Sydney—West.

- (2) Words and expressions used in this Division have the same meanings as they have in the Standard Instrument.

25S Determination of levies—residential development

- (1) A local levy condition may be imposed on a development consent in relation to residential development.
- (2) The levy rate specified in a contributions plan for residential development must not be more than the adjusted maximum levy rate.
- (3) The maximum levy rates for residential development are set out in the table to this clause.
- (4) The amount of a levy required to be paid must be determined by multiplying the number of levied dwellings by the levy rate specified for the development in the contributions plan as adjusted in accordance with the plan.

- (5) In this clause—

levied dwellings means the sum of the following permitted by the development consent on which the local levy condition is imposed—

- (a) for Category 1 and Category 5—
- (i) for a change of use—the number of additional dwellings, or
 - (ii) otherwise—the number of new dwellings,
- (b) for Category 2—
- (i) for a change of use—the number of additional bedrooms, or
 - (ii) otherwise—the number of new bedrooms,
- (c) for Category 3—
- (i) for a change of use—the number of additional beds, or
 - (ii) otherwise—the number of new beds,
- (d) for Category 4—the number of new sites,
- (e) for Category 6—the number of additional bedrooms.

residential development means development for the following purposes—

- (a) dwelling houses, attached dwellings and semi-detached dwellings (**Category 1**),
- (b) boarding houses, group homes, student housing, hotel or motel accommodation and serviced apartments (**Category 2**),
- (c) backpackers' accommodation, hostels and residential care facilities (**Category 3**),
- (d) caravan parks and manufactured home estates (**Category 4**),
- (e) dual occupancies, manor houses, multi-dwelling houses, residential flat buildings, secondary dwellings and self-contained dwellings used for the purposes of seniors housing (**Category 5**),
- (f) alterations and additions, excluding in relation to a change of use, for a purpose in Category 1 or Category 5 (**Category 6**).

public consultation draft

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

Maximum levy rates

Location of development	Category 1	Category 2	Category 3	Category 4	Category 5	Category 6
Greater Sydney—East	\$15,000	\$6,000	\$6,000	\$15,000	\$15,000	\$6,000
Greater Sydney—Central	\$12,000	\$5,000	\$5,000	\$12,000	\$12,000	\$5,000
Greater Sydney—West	\$10,000	\$4,000	\$4,000	\$8,000	\$8,000	\$4,000
Regional NSW	\$10,000	\$4,000	\$4,000	\$8,000	\$8,000	\$4,000

25T Determination of levies—commercial and industrial development

- (1) A local levy condition may be imposed on a development consent in relation to commercial and industrial development.
- (2) The levy rate specified in a contributions plan for commercial and industrial development must not be more than the adjusted maximum levy rate.
- (3) The maximum levy rates for commercial and industrial development are set out in the table to this clause.
- (4) The amount of a levy required to be paid must be determined by multiplying the levied gross floor area by—
 - (a) for development involving the alteration of an existing building—50% of the levy rate specified for the development in the contributions plan as adjusted in accordance with the plan, or
 - (b) otherwise—the levy rate specified for the development in the contributions plan as adjusted in accordance with the plan.
- (5) In this clause—

commercial and industrial development means the erection of a building or the change of use of a building to be used for the following purposes—

 - (a) commercial development (*Category 1*),
 - (b) retail development (*Category 2*),
 - (c) industrial development (*Category 3*).

commercial development means development for the following purposes—

 - (a) air transport facilities,
 - (b) amusement centres,
 - (c) animal boarding or training establishments,
 - (d) boat building and repair facilities,
 - (e) business premises,
 - (f) charter and tourism boating facilities,
 - (g) depots,
 - (h) early education and care facilities,
 - (i) eco-tourist facilities,
 - (j) entertainment facilities,
 - (k) function centres,
 - (l) health consulting rooms,

public consultation draft

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- (m) marinas,
- (n) medical centres,
- (o) office premises,
- (p) recreation facilities (indoor),
- (q) recreation facilities (major),
- (r) recreation facilities (outdoor),
- (s) sex services premises,
- (t) truck depots,
- (u) vehicle body repair workshops,
- (v) vehicle repair stations,
- (w) veterinary hospitals,
- (x) wharf and boating facilities,
- (y) wholesale supplies.

industrial development means development for the following purposes—

- (a) heavy industrial storage establishments,
- (b) industries,
- (c) rural industries,
- (d) storage premises,
- (e) warehouse or distribution centres.

levied gross floor area means the sum of the following permitted under the development consent on which the local levy condition is imposed—

- (a) for development involving the erection of a building, other than an addition—the gross floor area of a building,
- (b) for development involving an addition to an existing building—the additional gross floor area,
- (c) for development involving a change of use—the gross floor area of the existing building that is proposed to be converted to the new land use,
- (d) for development involving the alteration of an existing building—the gross floor area of the part of the building that is proposed to be altered.

retail development means development for the following purposes—

- (a) highway service centres,
- (b) industrial retail outlets,
- (c) registered clubs,
- (d) restricted premises,
- (e) retail premises,
- (f) service stations.

Maximum levy rates

Location of development	Category 1	Category 2	Category 3
Greater Sydney—East	\$50	\$35	\$35
Greater Sydney—Central	\$40	\$35	\$25
Greater Sydney—West	\$25	\$35	\$13
Regional NSW	\$25	\$35	\$13

25U Determination of levies—solar and wind electricity generation facilities

- (1) The amount of a levy required to be paid for development for the purposes of a solar and wind electricity generation facility is the maximum number of megawatts of the facility multiplied by \$2,000.
- (2) The amount of a levy required to be paid under this clause must not be more than \$450,000.
- (3) In this clause—

maximum number of megawatts of a facility means—

 - (a) the nameplate capacity of the facility, expressed in megawatts, or
 - (b) for a storage facility—the maximum amount of electricity, expressed in megawatts, that is able to be stored by the facility.

solar and wind electricity generation facility means a facility designed for the purposes of—

 - (a) the generation of wind or photovoltaic solar energy, or
 - (b) the storage of electricity generated from wind or photovoltaic solar energy.

storage facility means a facility designed only for the purposes of the storage of electricity generated from wind or photovoltaic solar energy.

25V Indexation of maximum levy rates and amounts

- (1) A contributions plan that authorises the imposition of a local levy condition must provide for the following in the same way as the method of adjustment of a maximum levy rate under this clause—
 - (a) the adjustment of the amount of a levy specified in a condition of consent for the purpose of calculating the levy required to be paid at the time of payment,
 - (b) the adjustment of the levy rates specified in the contributions plan.
- (2) The maximum levy rates are adjusted on 1 October 2022, and on the first day of each subsequent quarter, in accordance with this clause.
- (3) An adjusted maximum levy rate must be calculated by multiplying the maximum levy rate by $\frac{A}{B}$, calculated to the nearest 3 decimal places and a 4th decimal place of 5 being rounded up, where—

A is the current PPI for the last available quarter.
B is the PPI for the quarter ending 30 June 2022.
- (4) If the adjusted maximum levy rate is not a multiple of 10 cents, the amount must be rounded to the nearest multiple of 10 cents and an amount of 5 cents must be rounded up.
- (5) If the amount of an adjusted maximum levy rate for a quarter is less than the amount that applied for the previous quarter, the amount for the previous quarter continues to apply instead.
- (6) In this clause—

last available quarter means the most recently occurring quarter for which a PPI has been published.

[6] Clause 27

Omit clause 27. Insert instead—

27 Content of contributions plan

- (1) A contributions plan must include the following information—
 - (a) the purpose of the plan,
 - (b) the land to which the plan applies,
 - (c) the relationship between—
 - (i) the expected types of development in the area to which the plan applies, and
 - (ii) the demand for additional public amenities and services to meet the expected development,
 - (d) a map showing the specific public amenities and public services proposed to be provided by the council,
 - (e) a works schedule containing an estimate of the cost and staging of the public amenities and public services, whether by reference to dates or thresholds,
 - (f) if payments required for different purposes will be pooled and applied progressively for the different purposes—the priorities for the expenditure of the payments by reference to the works schedule.
- (2) If a contributions plan authorises the imposition of a local infrastructure condition, the plan must contain the following—
 - (a) the formulas to be used for determining contributions required under local infrastructure conditions for different categories of public amenities and public services,
 - (b) the rates for contributions required under local infrastructure conditions for different types of development, as specified in a schedule to the plan (the *contribution rates*),
 - (c) the method of adjustment of the following—
 - (i) the cost of public amenities and public services,
 - (ii) contribution rates, other than land value contributions,
 - (iii) contribution amounts specified in conditions of consent,
 - (d) an estimate of the interest incurred on loans and borrowings in relation to the provision of public amenities and public services for which contributions may be required.
- (3) If a contributions plan requires a land value contribution, the plan must contain the following—
 - (a) a cadastre level map of the land value contributions area,
 - (b) the total area of the land value contributions area,
 - (c) the percentage of land in the land value contributions area that is required for a public purpose,
 - (d) an indicative map showing the land required for a public purpose in the land value contributions area, including an estimate of each area of land,
 - (e) a description of the public purpose for which the land is required,
 - (f) the total area of land within the land value contributions area that is required for a public purpose for which a land value contribution is required.

public consultation draft

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

Note— The contributions plan must also contain the information set out in the Act, section 7.18(6).

- (4) If a contributions plan authorises the imposition of a local levy condition, the plan must contain—
- (a) the rates for levies required under local levy conditions for different types of development, as specified in a schedule to the plan, and
Note— Clauses 25S–25U contain the maximum levy amounts that may be imposed for different types of development.
 - (b) the method of adjustment of levies specified in conditions of consent.
- (5) A contributions plan must contain information about the council’s policy on the following—
- (a) the timing of the payment of monetary contributions and levies,
 - (b) the imposition of local infrastructure conditions or local levy conditions that allow deferred or periodic payments.
- (6) A contributions plan that provides for the imposition of local infrastructure conditions or local levy conditions in relation to the issue of a complying development certificate is taken to provide that monetary payments made in accordance with the conditions must be made before the commencement of the building work or subdivision work authorised by the certificate.
Note— Clause 136K imposes a condition on a complying development certificate in relation to the timing of payments of monetary contributions and levies. However, the consent authority must not impose a condition that is not in accordance with a ministerial direction—see the Act, section 7.17(3).
- (7) In determining monetary contributions or levies, the council must consider the conditions that may be imposed under the Act, section 4.17(6)(b) or the *Local Government Act 1993*, section 97(1)(b).

[7] Clause 28 Public exhibition of draft contributions plans

Insert “and the NSW planning portal” after “its website”.

[8] Clause 31 Approval of contributions plan by council

Omit clause 31(2). Insert instead—

- (2) The council must, within 28 days after the decision is made, publish notice of the decision on—
- (a) the council’s website, and
 - (b) the NSW planning portal.

[9] Clause 32 Amendment or repeal of contributions plan

Omit clause 32(3). Insert instead—

- (3) A council may make the following kinds of amendments to a contributions plan without preparing a new contributions plan or exhibiting the amendment—
- (a) minor typographical corrections,
 - (b) minor formatting changes consistent with a template published on the NSW planning portal,
 - (c) changes to the cost of public amenities and public services and local infrastructure contribution rates set out in the plan as a result of adjustments made in accordance with Division 1B, Subdivisions 2 or 4,

public consultation draft

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- (d) changes to remove details of works that have been completed from the schedule of works,
- (e) minor mapping changes that do not expand the land value contributions area or the area of land to which the contributions plan applies,
- (f) other changes relating to public amenities or public services if the changes do not—
 - (i) increase the local infrastructure contribution rates, or
 - (ii) change the types of development subject to the local infrastructure contribution rates, or
 - (iii) relate to the time at which a local infrastructure contribution must be made, unless the change gives effect to a ministerial direction made under the Act, section 7.17(h).

[10] Clause 33A

Omit the clause. Insert instead—

33A Review of contributions plans

- (1) A contributions plan must be reviewed at least once every 4 years.
- (2) After reviewing a contributions plan, the council must—
 - (a) approve the plan in accordance with this Part, or
 - (b) decide not to approve the plan.

33B Review of contributions plans—transitional arrangement

- (1) This clause applies to a contributions plan (an *existing contributions plan*)—
 - (a) approved before 1 July 2022, or
 - (b) exhibited before 1 July 2022 and approved after 1 July 2022.
- (2) A council must, by 1 July 2024 (the *review date*)—
 - (a) review an existing contributions plan, and
 - (b) if the council decides that local infrastructure contributions are required to be imposed after 1 July 2024—approve a new plan in accordance with this Part.
- (3) If the council fails to review and approve an existing contributions plan by 1 July 2024, the plan ceases to have effect on 1 July 2024.
- (4) The Planning Secretary may, on the written application of the council, change the review date by giving written notice of the changed review date to the council.
- (5) If a council receives a notice given under subclause (4), this clause applies as if the reference to 1 July 2024 is a reference to the changed review date.

[11] Clause 34 Councils must maintain contributions register

Omit clause 34(1). Insert instead—

- (1) A council must maintain a local infrastructure contributions register for local infrastructure conditions and local levy conditions imposed by the council, a Sydney district or regional planning panel or a registered certifier on—
 - (a) a development consent, or
 - (b) a complying development certificate.

public consultation draft

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[12] Clause 34A

Insert after clause 34—

34A Councils must keep affordable housing contributions register

- (1) An affordable housing contributions register must be kept by a council that requires an affordable housing contribution—
 - (a) as a condition on a development consent, or
 - (b) under a planning agreement.
- (2) The affordable housing contributions register must contain the following—
 - (a) details identifying each development consent subject to an affordable housing condition,
 - (b) the affordable housing scheme or planning agreement under which the contribution is required,
 - (c) if a monetary contribution is received—the dollar amount of the contribution,
 - (d) if affordable housing is provided—
 - (i) the value of the affordable housing determined in accordance with the Australian Accounting Standards for dwellings, floor space or land, and
 - (ii) the location and value of the land on which the affordable housing is provided,
 - (e) the date or dates on which the affordable housing contribution required by the condition was received,
 - (f) if the affordable housing contribution was made directly to a community housing provider—the name of the community housing provider.
- (3) In this clause—

Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board, as in force for the time being.

[13] Clause 35 Accounting for contributions and levies—councils

Omit clause 35(3)(d).

[14] Clause 35B

Insert in appropriate order in Part 4, Division 5—

35B Information to be included in annual reports of councils—affordable housing

- (1) A council must disclose, in its annual report, how affordable housing contributions have been used or expended under each affordable housing scheme.
- (2) The following details must be included for each project for which the contributions have been used or expended—
 - (a) the project identification number and description,
 - (b) if assets or dwellings have been transferred to a third party—the name of the third party,
 - (c) the value of the contributions used or expended on the project, including—
 - (i) the dollar amount of a monetary contribution received, if any, and

public consultation draft

Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 [NSW]
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- (ii) the value of the affordable housing provided, as determined in accordance with the Australian Accounting Standards, within the meaning of clause 34A, for dwellings, floor space or land,
 - (d) the number of dwellings delivered as a result of the project,
 - (e) the location of the dwellings delivered as a result of the project, including the address of the dwellings,
 - (f) if managed by a community housing provider—the name of the community housing provider who is managing the project,
 - (g) whether the dwellings are completed.
- (3) The annual report must also include—
- (a) the total value of all affordable housing contributions received during the period covered by the annual report, and
 - (b) the total value of all affordable housing contributions expended during the period covered by the annual report.
- (4) The information required to be included in the annual report must be published on the council's website and the NSW planning portal.
- (5) In this clause—
Australian Accounting Standards—see clause 34A(3).

[15] Clause 136K

Omit clauses 136K and 136L. Insert instead—

136K Conditions on complying development certificates issued for development for which a local infrastructure condition or local levy condition may be imposed

- (1) This clause applies to development for which a council's contributions plan authorises the imposition of a local infrastructure condition or local levy condition requiring the payment of a monetary contribution, whether or not the development is classed as complying development under the contributions plan.
- Note—** A monetary contribution under a local infrastructure contribution may include a land value contribution.
- (2) A complying development certificate for development to which this clause applies must be issued subject to the following conditions—
- (a) a local infrastructure condition or local levy condition, as required by the Act, section 4.28(9),
 - (b) subject to the condition in paragraph (c), the contribution must be paid before the work authorised by the certificate commences,
 - (c) the contribution must be paid at or by the time specified in a direction by the Minister under the Act, section 7.17(1)(h).
- Note—** The Minister may direct a consent authority in relation to the time at which a monetary contribution or levy must be paid. The consent authority must not impose a condition that is not in accordance with a ministerial direction—see the Act, section 7.17(3).
- (3) This clause applies despite a provision to the contrary in the council's contributions plan.

[16] Clause 271A

Insert after clause 271—

271A Contributions plans for certain development—the Act, s 4.16(11)

- (1) This clause applies to a development application for the following development on land identified in an environmental planning instrument as land to which this clause applies—
 - (a) development for the purposes of residential accommodation,
 - (b) development for the purposes of commercial premises,
 - (c) development for the purposes of industries.
- (2) A development application to which this clause applies must not be determined by the consent authority unless—
 - (a) a contributions plan has been approved for the land to which the application relates, or
 - (b) the relevant period has expired.
- (3) The consent authority may dispense with the requirement for a contributions plan if—
 - (a) the consent authority considers the development application is of a minor nature, or
 - (b) the developer has entered into a planning agreement for the matters that may be the subject of a contributions plan.
- (4) In this clause—

relevant period means a period of 6 months from the date the land is identified in the environmental planning instrument.

Drafting note 3.1 *Schedule 1, clauses 2 and 4 of the EPA Reg will be drafted/amended after consultation to ensure the information required to calculate contributions and levies accompanies a DA or application for a CDC.*

[17] Schedule 4 Planning certificates

Insert at the end of the Schedule with appropriate clause numbering—

Regional infrastructure contributions

If the certificate relates to land within the boundaries of a region to which a regional infrastructure contribution applies, the name of the SEPP that requires the contribution.

Drafting note 3.2 *Savings and transitional provisions will be drafted after consultation.*
