

## Proposed Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021

*This document answers frequently asked questions regarding the proposed Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021*

### Why is the EP&A Regulation being amended?

The NSW Government is committed to reforming the infrastructure contributions system to support good growth across NSW. In April 2020 the NSW Government requested the NSW Productivity Commissioner to undertake a review of the infrastructure contributions system and to report back with recommendations for reform.

The NSW Productivity Commissioner made 29 recommendations for a more certain, transparent, simple, efficient, and consistent system, all of which were accepted by the NSW Government in March 2021.

Legislative amendments to the *Environmental Planning and Assessment Act 1979* (the EP&A Act) and the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) are needed to implement the reforms.

Amendments to the EP&A Regulation support proposed changes to the EP&A Act and are now being released prior to progress of the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 for public feedback.

### What changes are proposed to the Regulation?

The proposed EP&A Regulation amendments implement the NSW Productivity Commissioner's recommendations to help support the efficient delivery of infrastructure.

The proposed amendments include the operational detail to:

- facilitate early identification of infrastructure needs,
  - address high and rising land values,
  - facilitate forward funding of infrastructure through pooling and borrowing,
  - improve revenue under section 7.12 contribution plans
  - improve public participation on draft planning agreements,
  - introduce reporting requirements for affordable housing contributions,
  - simplify and standardise exemptions policy for section 7.11 and section 7.12 contributions,
  - better align infrastructure contributions and strategic planning and delivery; and
  - make minor amendments to improve the efficiency of the contributions system.
- [Read the Explanatory Paper](#) outlining proposed amendments to the Regulation.
- [Read the consultation draft of the Regulation amending instrument.](#)

## Why are changes to the Regulation being exhibited before Parliament approves the Bill?

Proposed amendments to the EP&A Regulation support proposed amendments to the EP&A Act in the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (the Bill) introduced in NSW Parliament in June 2021. The Bill was referred to the Legislative Council Portfolio Committee No. 7 – Planning and Environment for inquiry. In its report, handed down on 10 August 2021, the Committee recommended:

*“That the [Bill] not proceed, until the draft regulations have been developed and released for consultation and the reviews into the rate pegging system, benchmarking and the essential works list have been published by the Independent Pricing and Regulatory Tribunal.”*

The Minister for Planning and Public Spaces (the Minister) committed to releasing the proposed EP&A Regulation amendments and other policy detail for public feedback (the subject of this exhibition). To view the Bill and for more information, please [visit the NSW Parliament website](#).

## How has consultation and stakeholder feedback informed the proposed Regulation amendments?

The Productivity Commissioner held extensive consultation in preparing *Review of Infrastructure Contributions in New South Wales* Final Report. This included extensive consultation with local government, State agencies, industry, community groups, and other stakeholders and targeted discussions. It also included invitations for and consideration of public submissions.

The [Final Report is available](#) on the Commission’s website.

The Department of Planning, Industry and Environment (the Department) has engaged with local government, industry, and practitioners through an External Advisory Group, Implementation Steering Committee, and Technical Working Group in implementing the system reforms.

In drafting the proposed Regulation amendments, the Department has considered stakeholder feedback including comments received during the Legislative Council inquiry.

## How will the proposed Regulation amendments affect council revenue and infrastructure delivery?

Overall, councils will be afforded greater fiscal flexibility under the reforms. Councils will be able to assess the relative financial benefit when deciding whether to prepare a section 7.11 or section 7.12 contributions plan to deliver local infrastructure.

The proposed Regulation amendments support key changes in the Bill aimed at enhancing local government infrastructure provision. These include:

- implementing the new approach to section 7.12 local levies by specifying:
  - a per dwelling rate for residential development and a per square metre rate for non-residential development with the exception of some uses where a per dwelling or per square metre approach doesn’t work,

- rates for development rather than ‘net additional’ development as proposed by the Productivity Commission including discounted rates for alterations and additions,
- differential rates for Greater Sydney and regional NSW; and
- rates for solar and wind farms.
- providing operational detail to support the new land value contribution mechanism to improve the cost recovery of land acquisition for public purposes.
- supporting the proposed Act amendments making it easier for councils to pool contributions within and between contributions plans, enabling earlier delivery of local infrastructure.
- allowing councils to recoup interest on loans, which will help councils better forecast and recoup the cost of borrowing to forward-fund infrastructure.

## How do the proposed Regulation amendments implement the land value contribution?

The proposed Regulation amendments set out the operational requirements for the land value contribution mechanism introduced in the Bill as an alternative for councils to impose contributions to fund land acquisition for public purposes in section 7.11 contributions plans.

This includes proposed amendments to specify:

- how the contribution is to be imposed in “land value contributions areas” identified in section 7.11 contributions plans,
- the method for calculating a “land value contribution”
- a maximum percentage for the purpose of calculating a “land value contribution”,
- the method for valuing land,
- contents of contributions plans that include a land value contribution including the area of land required for a public purpose in a land value contributions area; and
- details about landowner applications for and the content and issuing of land value contribution certificates by councils.

## Do the proposed Regulation amendments affect funding of local community infrastructure?

Councils will have the option of considering the relative benefit, for funding local open space and community facilities, when choosing to prepare a new section 7.11 or 7.12 contributions plan under the reformed system. Councils will continue to be able to levy contributions for local community infrastructure using section 7.12 contributions plans under proposed changes to section 7.12 rates in the Regulation.

The Productivity Commission recommended that the essential works list be applied to all section 7.11 contributions plans and be contained to funding development-contingent infrastructure. The Independent Pricing and Regulatory Tribunal (IPART) is reviewing the essential works list, nexus, and efficient infrastructure design, and is expected to release its draft report for comment later this year.

IPART has also commenced a review of benchmarking costs for local infrastructure and the Minister asked IPART to consider the different needs of infill, greenfield, metropolitan and regional

councils in conducting the review. The reviews have been conducted independently and transparently, and stakeholders have been invited to provide feedback to IPART.

No changes to the Regulation are proposed to implement changes that may result from the IPART reviews. This is expected to be achieved through Ministerial directions and/or practice notes.

### Do the proposed Regulation amendments deal with the new regional infrastructure contribution?

Regional infrastructure contributions will replace special infrastructure contributions (SICs) currently levied by the State government to fund State infrastructure such as schools and regional community infrastructure.

Requirements relating to regional infrastructure contributions are proposed to be included in a SEPP. Please refer to the [Discussion Paper and Explanation of Intended Effect](#) which are also on exhibition.

### How do the proposed Regulation amendments relate to proposed changes to council rates?

The proposed reforms to the infrastructure contributions system rebalance revenue sources to fund state and local infrastructure. IPART has completed its review of the local government rate peg to allow for population growth. On 5 October 21, the Minister for Local Government endorsed IPART's proposed methodology, allowing a new population factor (different for each council) to be set from 2022-23.

The proposed changes to the rates system are separate to changes proposed to local contributions but are expected to improve council revenue for infrastructure not directly related to demand created by new development. There are no proposed changes to the Regulation in relation to the rates peg.

More information is [on the Office of Local Government website](#).

### When will the changes come into effect?

The changes are expected to come into effect from 1 July 2022 onwards. Councils will be required to review their contributions plans as follows:

- contributions plans approved before 1 July 2022 or exhibited before 1 July 2022 and approved after 1 July 2022 must be reviewed and updated under the new requirements by 1 July 2024,
- any council may apply for an extension to the 1 July 2024 deadline; and
- all “new” contributions plans made after 1 July 2022 are to be reviewed at least every 4 years from the date the contributions plan is approved.

### What assistance will be given to councils to transition to the new system?

The Productivity Commission recommended that contributions plans be reviewed by 1 July 2024 to provide a clear start date. We have considered the need for some flexibility and have allowed any council to apply for an extension to the 1 July 2024 review deadlines, as outlined above.

We welcome feedback on proposed review dates for contributions plans along with other policy settings during exhibition.

### How do these amendments relate to recent amendments to the Regulation?

The proposed amendments follow amendments made to the Regulation (*Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2021*) made in February 2021. They introduced additional reporting requirements for contributions received by councils and other planning authorities under planning agreements and contributions plans which come into effect from 1 July 2022. For more information please refer to the [Planning Circular](#). New reporting requirements for affordable housing contributions now proposed in the Regulation adopt a similar approach to these earlier amendments.

Separate proposed EP&A Regulation amendments exhibited from August to September 2021 carry over and re-number Regulation provisions with some minor amendments relating to contributions to:

- require practice notes for contributions plans to be published online, and
- require councils to indicate whether land is in a special contributions area and to note whether any draft contributions plans apply to the land in planning certificates.

For more information about the 2021 review of the Regulation, please visit: <https://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/EPA-Regulation-review/2021-EPA-regulation>

### What are the next steps?

We are seeking feedback on the proposed Regulation amendments during exhibition. We will consider all feedback received in submissions in finalising the proposed Regulation amendments.