

Infrastructure Contributions

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

Explanatory Paper

October 2021

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Proposed Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 - Explanatory Paper

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Executive Summary

Public infrastructure plays a critical role in supporting the growth and productivity of our cities and regions. Infrastructure contributions are a funding mechanism to deliver public infrastructure to accommodate development and support growing communities.

The Environmental Planning and Assessment Act 1979 (the EP&A Act) and *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) set out the statutory requirements for infrastructure funding contribution collection and use in New South Wales (NSW).

The current infrastructure contributions system has not changed much since significant reforms were implemented in 1991. There is a general acknowledgement by local government, industry and the community that reform of the infrastructure contributions system is needed and long overdue.

In April 2020 the NSW Government requested the NSW Productivity Commissioner to undertake a review of the infrastructure contributions system in NSW, and report back with recommendations for reform.

The NSW Productivity Commissioner made 29 recommendations, all of which were accepted by the NSW Government in March 2021. The *Infrastructure Contributions Reform Roadmap* was released to outline the implementation program of the NSW Productivity Commissioner's recommendations.

Proposed amendments to the EP&A Act in the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021 (the Bill) were introduced in NSW Parliament in June 2021 and subsequently considered by a Parliamentary Committee.

The Department of Planning, Industry and Environment (the department) is proposing

changes to the EP&A Regulation to implement the NSW Productivity Commissioner's recommendations. The proposed amendments include the operational detail to support the Bill and:

- facilitate early identification of infrastructure needs,
- address high and rising land values,
- forward funding infrastructure through pooling and borrowing,
- improve revenue collected under section 7.12 contributions plans,
- include changes to 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 with strategic planning and delivery, and
- make minor amendments to improve the efficiency of the contributions system.

The proposed changes are consistent with the NSW Productivity Commissioner's recommendations, with some refinements made to respond to issues raised by local government, industry and the community. In particular, the method for charging section 7.12 levies more fairly and accurately reflects the NSW Productivity Commissioner's recommended 3% of construction cost.

The proposed changes can be viewed in the draft Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021 (draft instrument).

Together with the Bill, the proposed changes to the EP&A Regulation will implement the necessary legislative changes to make the infrastructure contributions system more certain, efficient, simple, transparent and consistent.

1 Introduction

The EP&A Act provides the overarching framework for the NSW planning system. The EP&A Regulation supports the day-to-day operation of this system. It contains key provisions including those relating to development contributions and planning agreements.

This paper outlines proposed amendments to the EP&A Regulation as part of the *Infrastructure Contributions Reform Roadmap*. This follows the NSW Government's acceptance of all 29 recommendations of the NSW Productivity Commissioner's review of the infrastructure contributions system.

Proposed amendments to the EP&A Regulation support proposed amendments to the EP&A Act in 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 made a single recommendation:

“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.”

See <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2821>.

This paper explains proposed changes to the EP&A Regulation and the rationale and effect of those changes. It should be read in conjunction with the Bill which can be found on the NSW Parliament website at <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3880>.

Information and related documents also on exhibition to implement contributions reform can be found at: www.planningportal.nsw.gov.au/local-contribution.



2 Background

2.1 Productivity Commission review

In April 2020 the Hon Rob Stokes MP, Minister for Planning and Public Spaces, asked the NSW Productivity Commissioner to undertake a holistic review of the NSW infrastructure contributions system. The aim was to consider whether the current system meets the objectives of certainty and efficiency to deliver public infrastructure to support development and to report back with recommendations for reform.

The NSW Productivity Commissioner released his Final Report on the *Review of Infrastructure Contributions in New South Wales* on 3 December 2020 (available at the NSW Productivity Commission's website at <https://www.productivity.nsw.gov.au/infrastructure-contributions-review>). The Report includes 29 recommendations for system reform to create certainty about the funding and delivery of infrastructure to support new and existing communities.

In March 2021, the NSW Government accepted all 29 recommendations to:

- move towards a principles-based infrastructure contributions system based on certainty, efficiency, simplicity, transparency and consistency,
- enhance the capacity of councils to support growth,
- strike a balance between efficiency, simplicity and certainty for local infrastructure contributions,
- develop a stronger funding base for State and regional infrastructure,
- make the system more consistent, transparent and easy to navigate, and
- better align infrastructure contributions and strategic planning and delivery.

2.2 Implementation

The key steps to implementing the NSW Productivity Commissioner's recommendations include:

- amending the EP&A Act to establish the legislative framework for the reforms (see part 2.3 for summary).
- amending the EP&A Regulation to include relevant detail (the subject of this paper).
- new and updated policy materials including Ministerial Directions and Practice Notes.

For further information see the *Infrastructure Contributions Reform Roadmap* at <https://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding/Improving-the-infrastructure-contributions-system>.

There are other funding mechanisms to secure revenue for local infrastructure, such as rates and user charges. Recent amendments to the *Local Government Act 1993* will allow councils to review their general income to include population growth. The Independent Pricing and Regulatory Tribunal (IPART) has conducted a review of the new rating methodology <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Rate-peg-population-growth/Review-of-the-rate-peg-to-include-population-growth>. The final report was presented to the Minister for Local Government on 10 September 2021, who has endorsed the rate peg methodology and asked IPART to give effect to it in setting the rate peg from the 2022-23 financial year.

IPART is also undertaking reviews of:

- the essential works list, nexus and efficient infrastructure design which can be found at <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Contributions-Plan/Review-of-the-essential-works-list-nexus-and-efficient-infrastructure-design>.
- benchmark costs for local infrastructure which can be found at <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Contributions-Plan/Review-of-benchmark-costs-for-local-infrastructure>.

IPART's exhibition of the draft reports is expected to commence during October 2021. The final reports for both reviews are scheduled to be presented to the Minister for Planning and Public Spaces in December 2021.

2.3 Proposed amendments to the EP&A Act

Proposed amendments to the EP&A Act either directly implement the NSW Productivity Commissioner's recommendations or allow regulations, directions or other arrangements to do so (see Table 1).

Table 1: Proposed changes to contributions mechanisms in the Bill

Mechanism	Proposed changes
Planning agreements	<ul style="list-style-type: none"> Planning authorities must exhibit rather than notify planning agreements for a minimum of 28 days and invite and consider submissions. Physical copies of planning agreements are no longer required.
Section 7.11 local infrastructure contributions	<ul style="list-style-type: none"> Section 7.11 of the Act has been redrafted but operates in a similar way to how it does now. Section 7.11 contributions have been renamed 'local infrastructure conditions' and are imposed on development consents to fund local infrastructure with a relationship to development. A new land value contribution has been introduced as an alternative approach for councils to recover the cost of land acquisition in 'land value contributions areas' subject to planning proposals to rezone land if identified in section 7.11 contributions plans. To encourage councils to forward fund infrastructure the Bill allows councils to pool contributions for purposes identified in more than one plan and provides a regulation-making power to allow councils to recoup interest costs associated with borrowing. IPART's concurrent work in reviewing the essential works list and investigating benchmark costs for section 7.11 contributions plans will ensure local infrastructure contributions are used to fund the provision of development-contingent infrastructure, as described in the Final Report by the Productivity Commissioner.
Section 7.12 local infrastructure contributions	<ul style="list-style-type: none"> Section 7.12 levies have been renamed to 'local levy conditions' and are imposed on development consents to fund local infrastructure with a relationship to overall development across an area. The Bill allows regulations to set section 7.12 rates in ways other than by percentage of construction cost.
State infrastructure contributions	<ul style="list-style-type: none"> A regional infrastructure contribution replaces the existing special infrastructure contributions framework. It is to be imposed as a broad-based, flat charge for the State to collect contributions toward the provision of State and regional infrastructure. The regional infrastructure contribution may include transport project and/or strategic biodiversity components. The regional infrastructure contribution will be applied by a State Environmental Planning Policy (SEPP) instead of by declaration, determination, and direction (as is currently the case with special infrastructure contributions).

3 Proposed regulation amendments

The proposed regulation amendments implement the NSW Productivity Commissioner's recommendations by including either:

- additional detail and requirements to support new provisions in the Act, or
- new requirements that do not need Act amendments.

Some consequential amendments and housekeeping amendments to the EP&A Regulation are also proposed to make the infrastructure contributions system easier to understand and use.

The proposed amendments are outlined below.

3.1 Facilitating early identification of infrastructure needs

Recommendation 4.1: Develop infrastructure contributions plans upfront as part of the zoning process

Proposed changes

A new Ministerial Direction under section 9.1 of the EP&A Act is proposed as the primary measure to implement this recommendation. It will indicate to councils when draft contributions plans need to be prepared and exhibited with planning proposals.

It is also proposed to create a mechanism to apply a restriction on the approval of development applications if a draft contributions plan has not been prepared to support major rezoning. Currently clauses 270, 270A and 271 of the EP&A Regulation prevent the determination of development applications until a contributions plan is in place in certain areas of the Western Sydney Employment Area, Sydney Region Growth Centres and Western Sydney Aerotropolis. It is proposed that similar restrictions are applied across the State where rezoning and contributions planning are being done concurrently, to avoid the need to amend the EP&A Regulation every time.

The draft regulation will amend the EP&A Regulation to require contributions plans to be approved before determination of development applications if they are:

- on land in an area identified in an environmental planning instrument if the instrument also rezones the land, and
- for development for the purposes of residential accommodation, commercial premises or industries.

The measure will be time-limited to six months to avoid unreasonable delays to rezoning and to approval of development applications.

Rationale

The NSW Productivity Commissioner identified a need to ensure infrastructure planning is part of the strategic land use planning process. Under current arrangements, the identification of infrastructure needs and preparation of infrastructure contributions plans are often completed after rezoning occurs. Certainty around contributions early in the development cycle can act as a cost signal to encourage cost-efficient development.

The new Ministerial direction will give councils and other planning proposal authorities discretion to decide if a draft contributions plan is needed to support the planning proposal and if so to endeavour to exhibit it at the same time, or as soon as possible after the planning proposal is placed on exhibition.

The proposed amendment is an additional discretionary measure to be applied when a draft environmental planning instrument is prepared to require adoption of infrastructure contributions plans before any determination is made on a development application. Providing the option for planning authorities to enable this measure through inclusion in an environmental planning instrument addresses the risk of major development proceeding before a contributions plan is in place.

Effect of the changes

- Industry, local councils and the community are provided greater certainty upfront over their contributions obligations and infrastructure provision respectively.
- Consent authorities have discretion to apply the new requirement and the department will have oversight where councils propose to amend LEPs in this regard.

3.2 Addressing high and rising land values

Recommendation 4.2: Introduce a direct land contribution mechanism to improve both efficiency and certainty for funding land acquisition

Recommendation 4.4: Index land contribution amounts to changing land values

Proposed changes

The Bill introduces a new land value contribution as an alternative for councils to impose contributions for land acquisition costs in section 7.11 contributions plans. Under the new provisions the operational requirements of the land value contribution are to be set out in the supporting regulations.

The draft regulation will amend the EP&A Regulation:

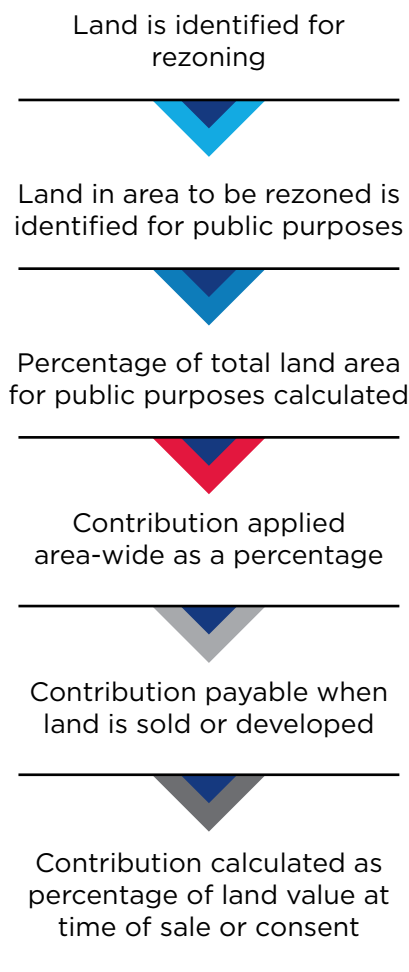
- to support the land value contribution:
 - cap the contribution at 20% of the value of land in a “land value contributions area”, which is required under the Bill to be identified in a contributions plan.
 - specify the method to calculate the land value contribution,
 - require land value contributions plans to include detailed information including maps, numerical values for total area of land in the land value contributions area and the land identified for public purposes, as well as the land value contributions percentage to be applied (which cannot exceed the maximum percentage in the regulation),

- set procedures for land value contributions certificates including how to apply for a certificate and what they should contain, fees (\$53), time to be issued (5 days) and lapsing periods (1 year), and
- specify the method for determining the value of land in a land value contributions area.
- for land value contributions imposed at the development application stage in a condition of consent and other local infrastructure conditions:
 - land acquisition costs for land yet to be acquired will be indexed in accordance with a Land Value Index published by the NSW Valuer General or the Producer Price Index (Road and Bridge Construction – NSW) if no Land Value Index has been prepared, and
 - land acquisition costs for land already acquired and works costs (i.e. non-land components) will be indexed in accordance with the Producer Price Index (Road and Bridge Construction – NSW).
- contributions rates in contributions plans and amounts payable in conditions of consent will be adjusted to reflect variations in the relevant indices.

Rationale

The NSW Productivity Commissioner made three recommendations to address the high and escalating costs faced by councils in acquiring land for public purposes under section 7.11 contributions plans. In greenfield areas land values tend to rise faster and at a much earlier stage of development, often before a rezoning is finalised.

The Bill introduces a new “land value contribution”, which is a contribution towards the provision of land for public purposes by all landowners in a “land value contributions area”. The land value contribution is calculated using the percentage of land needed for public infrastructure purposes in the “land value contributions area” and the value of land at the time the contribution is imposed, either at sale or development approval, whichever comes first. The contribution obligation is created on landowners who benefit from their land being rezoned.



The land value contribution is an alternative approach to the existing method of using estimated land costs at the time a section 7.11 contributions plan is prepared. Application of a percentage of land value to calculate the contribution when it is imposed will allow for contributions to better reflect changes to land values over time. The new approach is best suited to high-growth areas and can only be introduced when land is rezoned for more intense development.

The proposed regulation separately identifies land and capital (non-land) costs under section 7.11 plans and specifies the indexation method for each. Indices will be updated and rates adjusted accordingly. It is also proposed to index land value contribution amounts when a local infrastructure condition is imposed.

Effect of the changes

- The regulation amendments provide the detail for councils opting to use the new land value contribution mechanism for the land component of section 7.11 contributions plans to fund the acquisition of land for public purposes in areas to be rezoned for a more intense land use.
- Specifying the indices to be used for land and works costs in local contributions plans ensures a consistent approach.
- Indexation methods for section 7.11 contributions plans are standardised using an index that relates better to the cost of infrastructure.

3.3 Forward funding infrastructure through pooling and borrowing

Recommendation 4.9: Encourage councils to forward fund infrastructure, through borrowing and pooling of funds

Recommendation 4.9(i): Amend legislation to allow:

- *pooling of contributions funds as the default option*
- *interest costs associated with borrowing for infrastructure to be collected through contributions plans.*

Proposed changes

The draft regulation will amend the EP&A Regulation to:

- remove an existing pooling provision made redundant by Act amendments that limit pooling between contributions plans, and
- allow interest costs associated with borrowing for infrastructure to be recouped through contributions plans.

Rationale

The NSW Productivity Commissioner recognised that fiscal flexibility of councils could be improved by allowing and encouraging pooling of contributions funds and borrowing to forward fund infrastructure provision. However there are key barriers to doing so, including administrative complexity and a lack of integration between contributions plans, delivery programs and operational plans.

The EP&A Regulation currently allows councils to pool contributions if it is specifically authorised by a contributions plan. The Act amendments in the Bill will allow councils to pool contributions within and between contributions plans.

The EP&A Regulation also currently specifies the indexation method for the cost of providing public amenities or public services in section 7.11 and section 7.12 contributions plans. Rather than councils recouping interest through indexation of contributions we would like to allow councils to factor in interest on amounts borrowed into their contribution rates upfront in contributions plans and to index those interest costs using the Producer Price Index (Road and Bridge Construction – NSW). This will improve councils' ability to recoup the real costs of providing infrastructure.

The indexation method for contribution amounts for both section 7.11 and section 7.12 will also be standardised in the regulation amendments (see parts 3.2 and 3.4).

Effect of the changes

- Councils will have more fiscal flexibility to help deliver the critical local infrastructure communities need.
- Pooling contributions funds within and between contributions plans will be possible by default, enabling earlier delivery of local infrastructure.
- Councils will be able to include forecast interest on borrowings into section 7.11 contributions rates instead of relying on the indexation of contribution amounts to recoup interest costs.



3.4 Improving revenue collected under section 7.12 contributions plans

Recommendation 4.11: Increase the maximum allowable rate for local levy conditions

Proposed changes

The draft regulation will amend the EP&A Regulation to:

- set new local levy (previously section 7.12) condition rates for named development types by area (generally based on Greater Sydney region boundaries):

	House per dwelling	Other residential per dwelling (dual occupancies etc)	Additional bedroom per room for additions	Commercial per m ² new and additions*	Retail per m ² new and additions*	Industrial per m ² new and additions*
Greater Sydney - East	\$15,000	\$15,000	\$6,000	\$50/\$25	\$35/\$17.50	\$35/\$17.50
Greater Sydney - Central	\$12,000	\$12,000	\$5,000	\$40/\$20	\$35/\$17.50	\$25/\$12.50
Greater Sydney - West	\$10,000	\$8,000	\$4,000	\$25/\$12.50	\$35/\$17.50	\$13/\$6.50
Regional NSW	\$10,000	\$8,000	\$4,000	\$25/\$12.50	\$35/\$17.50	\$13/\$6.50
	Boarding houses/group homes/student accommodation/hotels/motels/serviced apartments per bedroom	Aged care facilities/nursing homes/hostels/backpackers' accommodation per bed		Caravan parks/manufactured home estates per site	Solar and wind farms per megawatt (capped at \$450,000 per project/DA)	
Greater Sydney - East	\$6,000	\$6,000		\$15,000	\$2,000	
Greater Sydney - Central	\$5,000	\$5,000		\$12,000	\$2,000	
Greater Sydney - West	\$4,000	\$4,000		\$8,000	\$2,000	
Regional NSW	\$4,000	\$4,000		\$8,000	\$2,000	

*where the development is an alteration to an existing development, the maximum rate will be 50% of the maximum rate for a new development or addition to existing development.

- set a 4 year review period for local levy condition rates,
- require local levy rates and conditions to be adjusted to reflect variations using the Producer Price Index (Road and Bridge Construction – NSW), and
- provide savings and transitional provisions for existing section 7.12 contributions plans.

Rationale

Local levy conditions give councils the option to more easily fund the infrastructure required to support development, without having to establish full nexus and apportionment required for local infrastructure conditions under section 7.11.

Councils may impose development consent conditions requiring payment of a levy calculated as a percentage of the proposed cost of development. The EP&A Act provides that regulations can specify how the proposed cost is to be estimated or determined and can set the maximum percentage charge.

Clause 25K of the EP&A Regulation currently sets the maximum section 7.12 levy at 1% of the proposed development cost, and councils can apply to increase the rate to up to 3% based on the criteria set out in a Practice Note.

The Act amendments in the Bill will allow local levy conditions to be set more broadly than a percentage of development cost. Under the new system, the regulations will specify a per dwelling basis for residential development and a per square metre basis for non-residential development.

The NSW Productivity Commissioner recommended raising the rate to the equivalent of 3% of development cost for residential development, expressed as a rate per additional dwelling. For other development he recommended a rate per additional square metre of gross floor area, intended to be the equivalent of 1% of development cost.

In order to better align infrastructure charges with drivers of infrastructure demand rather than development cost and address concerns of industry gaming the system by under quoting development costs, the NSW Productivity Commissioner proposed the following maximum local levy condition rates:

House	Other residential	Commercial	Retail	Industrial
per additional dwelling	per additional dwelling	per additional m ²	per additional m ²	per additional m ²
\$10,000	\$8,000	\$35	\$25	\$13

However, local councils raised concerns with the department and in submissions made to the Parliamentary inquiry into the Bill that the blanket application of the section 7.12 rates did not reflect the variability of construction costs across NSW.

Local councils also raised concerns with applying the levy to only net additional development. Councils who predominately rely on section 7.12 contributions plans generally have high replacement dwelling ratios, meaning application only to net additional development would result in a negative financial impact for many metropolitan infill areas.

The department has considered the issues raised and undertaken a review of the proposed charging methodology. See Appendix A for supporting study.

The charging methodology has been amended to apply differential rates across Greater Sydney and regional NSW, recognising that the cost of development varies across the regions. The rationale for differential rates by region and by development type is guided by their respective development cost and target alignment with the % of development cost recommended by the Productivity Commissioner. In addition, the rates will apply to development, rather than 'net additional' development (that is, rates will also apply to 'knock down/rebuild' development) to ensure the mechanism operates effectively to fund infrastructure demand generated by growth by considering the economic life of buildings.

Concerns were also raised by some local councils about demand on infrastructure created by alterations and additions, as well as solar and wind farms. The department has further investigated these development types and rates for these are now proposed.

For development types such as boarding houses and caravan parks that cannot be levied easily using a calculation methodology based on a per dwelling or a per square metre basis, alternative methods are proposed.

Effect of the changes

- The proposed methodology is expected to better balance the benefit of a simple section 7.12 contributions plan against the more administratively demanding preparation of section 7.11 contributions plans in areas with high infrastructure need.
- 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 with regards to the differential section 7.12 rates set out in the regulations.
- Councils in high-growth greenfield areas will have certainty upfront about revenue from section 7.12 plans without the need to apply for a maximum levy higher than 1% for residential development.
- Councils are expected to receive improved funding as a result of indexation methods that are better tailored to infrastructure contributions.
- Indexation methods for section 7.12 are standardised using an index that relates better to infrastructure.

3.5 Changes to public participation on draft planning agreements

Recommendation 4.12: Planning agreements consistent with the principles-based approach

Recommendation 4.12 (iii): Amend legislation to:

- register planning agreements and draft planning agreements in a centralised system, contained within the NSW Planning Portal
- 'publicly exhibit' rather than 'publicly notify' planning agreements, including requirements to receive and consider public submissions

Proposed changes

The draft regulation will amend the EP&A Regulation to:

- include requirements about the manner and timing of exhibition of draft planning agreements on the NSW planning portal.

Rationale

Planning agreements are negotiated between developers and planning authorities to deliver bespoke, innovative infrastructure solutions. They provide flexibility but are not currently subject to the same community participation and transparency requirements as contributions plans.

Part 4 Division 1A of the EP&A Regulation currently sets out the detailed requirements for the use of planning agreements, including public notice and online publication on council and planning authority websites and on the NSW planning portal. The Bill proposes to increase public participation requirements for planning agreements in Schedule 1 to the EP&A Act, with a mandatory exhibition period of 28 days.

To support the Act amendment, the EP&A Regulation will specify how and when draft planning agreements are to be exhibited.

Effect of the changes

- Greater transparency and certainty for the community about what is being negotiated in planning agreements and the infrastructure to be delivered.

3.6 Reporting requirements for affordable housing contributions

Recommendation 4.14: Improve accountability for affordable housing contributions

Regulation

The draft regulations will amend the EP&A Regulation to:

- require councils to keep and make public an affordable housing contributions register, and specify information requirements to be kept on the register:
 - particulars relating to the development consent reference that imposed the condition (the development application reference, consent authority and date imposed),
 - the affordable housing scheme or the planning agreement under which the contribution was required,
 - the monetary amount of contributions received and/or the value of affordable housing dwellings delivered,
 - the date or dates the contribution was received, and
 - if the contribution is made directly to a community housing provider, the name of the community housing provider.
- require councils to report expenditure of affordable housing contributions by project in their annual reports:
 - project identification number and description,
 - if any assets/dwellings have been transferred

to a third party - specify that party (e.g. community housing provider),

- the location and address of affordable housing dwellings delivered through the project,
 - the number of dwellings delivered as part of the project,
 - the amount of monetary affordable housing contributions used or expended on the project, including the value of any land or floor space provided by developers,
 - which community housing provider is managing the project, and
 - whether the dwellings are completed.
- require councils to publish the affordable housing contributions information required in annual reports on the NSW planning portal as well as on their own websites.

Rationale

The EP&A Regulation currently sets out reporting requirements for contributions received under planning agreements and contributions plans. Additional reporting and online publication requirements for these contribution types, to come into force on 1 July 2022, were included in an EP&A Regulation amendment made in February 2021. These requirements do not currently apply to affordable housing contributions received by councils and imposed in conditions of consent under section 7.32 of the EP&A Act and *State Environmental Planning Policy 70 – Affordable Housing (Revised Schemes)* or planning agreements.

It is proposed to create new reporting requirements for affordable housing contributions to ensure consistency of reporting between the different types of contributions, increasing transparency and accountability in the contributions system. This will increase community confidence in the existing affordable housing mechanisms, by letting the community know where contributions are received and how they are spent.

Effect of the changes

- Councils will be required to report on contributions collected through SEPP70 affordable housing schemes and planning agreements, and to publish this information on the NSW planning portal.
- Councils and the State government will have greater ability to evaluate existing affordable housing contributions mechanisms and to monitor their effectiveness.
- There will be greater public transparency about affordable housing contributions received by councils and affordable housing delivered.

- Crown development for the purposes of schools, health services facilities, emergency services facilities, public administration buildings,
- development currently covered by the *Environmental Planning and Assessment (Local Infrastructure Levies) Direction 2015*,
- development in the Port Botany Lease Area, Port Kembla Lease Area and Port of Newcastle Lease Area under *State Environmental Planning Policy (Three Ports) 2013*, and
- any other development specified by a council in its contributions plan.

Rationale

The proposed amendments seek to consolidate existing exemptions from the requirement to pay local infrastructure contributions.

Currently exemptions in the infrastructure contributions system are established by different instruments with no standard policy to guide decision-making. In some cases, exemptions are given on a case-by-case basis by consent authorities. This fragmentation has led to concerns about equity and inconsistencies in the application of exemptions across the State.

Councils will retain discretion to specify additional exemptions in contributions plans. A Practice Note will be developed and made available to give guidance on additional exemptions. The NSW Productivity Commissioner suggested this could be based on the following principles:

- infrastructure demand created,
- social benefit provided,
- capacity to pay, and
- opportunity cost of granting an exemption

Effect of the changes

- Greater consistency, transparency and certainty about exemptions to infrastructure contributions.
- Councils maintain flexibility to apply additional exemptions within a contributions plan.

3.7 Simplifying and standardising exemptions

Recommendation 6.4: Introduce a simple, clear, standardised exemptions policy

Proposed changes

The draft regulations will amend the EP&A Regulation to exclude the following development from local infrastructure contributions:

- public housing within the meaning of the *Housing Act 2001*,
- affordable housing or seniors housing carried out by or on behalf of a social housing provider:
a social housing provider is any of the following—
 - a. Services Australia,
 - b. the Land and Housing Corporation,
 - c. a registered community housing provider,
 - d. a specialist supported accommodation provider,
 - e. the Aboriginal Housing Office,
 - f. a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,
 - g. a local government authority that provides affordable housing,
 - h. a not-for-profit organisation that is a direct provider of rental housing to tenants

3.8 Better aligning infrastructure contributions and strategic planning and delivery

Recommendation 6.6: Incorporate the local infrastructure contributions system into the Integrated Planning and Reporting framework

Proposed changes

The draft regulation will amend the EP&A Regulation to:

- require contributions plans approved before 1 July 2022 to be reviewed and re-made prior to 1 July 2024,
- require contributions plans exhibited before 1 July 2022 and approved after 1 July 2022 to be reviewed and re-made by 1 July 2024,
- allow any council to apply for an extension to the 1 July 2024 deadline,
- require “new” contributions plans made after 1 July 2022 to be reviewed at least every 4 years from the date the contributions plan is approved,
- set out circumstances where a contributions plan can be amended for minor changes without the need for public exhibition:
 - changes to contribution amounts that are consistent with the indexation methods permitted by the EP&A Regulation or the Valuer-General’s land value methodology,
 - adjustments to the rates to include the recoupment of interest costs (provided the changes do not otherwise increase the contributions payable under the plan),
 - minor formatting changes consistent with the standard templates to be published on the NSW planning portal,
 - removal of completed items from the schedule of works,
 - minor mapping changes that do not increase the area to which the contributions plan applies,
 - minor typographical corrections, and
 - other changes that do not alter the public amenities or public services for which contributions may be required to be made (provided the changes do not otherwise

increase the contributions payable under the plan, or expand or alter the types of development subject to the contribution).

- require councils to publish draft contributions plans on the NSW planning portal,
- require notice of a council’s decision to approve a contributions plan to be published on the NSW planning portal and council’s website, and
- provide savings and transitional arrangements to:
 - ensure the existing section 7.12 levy method and contributions plans including Ministerial Directions are preserved until new contributions plans are approved, and
 - preserve conditions of consent and indexation methods issued under existing contributions plans that are replaced and repealed after new requirements come into force.

Rationale

The EP&A Regulation currently requires councils to keep a contributions plan under review and to review it by any date set out in the contributions plan. However, the EP&A Regulation does not specify a standard approach for how often contributions plans should be reviewed, which creates complexity and a high degree of variation between local government areas.

Councils are also required to publish the notice of a decision on a draft contributions plan on their websites within 28 days. However, the EP&A Regulation does not specify a central location where these notices can be found.

It is important for transparency and simplicity that contributions documents can be found in one location. The NSW planning portal is the appropriate place to publish additional documents and it is also a convenient place for those who are interested in finding information on contributions.

The NSW planning portal currently houses approved contributions plans, planning agreements, and other contributions documents. From 1 July 2022 other documents related to infrastructure contributions (such as planning agreement explanatory notes, contributions

registers and financial statements/reports) will be required to be placed on the NSW planning portal as well as on councils' and planning authorities' websites.

Contributions plans can only be amended without preparing a new contributions plan under certain limited circumstances. Taking into consideration the broader reforms to the infrastructure contributions system (including indexation, interest costs and the use of the NSW planning portal), expanding the circumstances where public exhibition is not required will increase flexibility and improve the operational efficiency of the system.

Changes to the Integrated Planning and Reporting framework do not require regulation amendments and will be progressed during implementation.

Effect of the changes

- Generally, councils will need to prepare contributions plans under the new requirements by 1 July 2024 but will be able to apply for an extension.
- After 1 July 2022, councils will be required to review their contributions plans at least every four years from the date a new plan is approved.
- Councils will not have to re-exhibit their contributions plans when they make specified minor changes to them.
- Councils will need to publish their draft contributions plans and give notice that they have approved a contributions plan on both their own websites and on the NSW planning portal.

3.9 Minor amendments

Proposed changes

The draft regulations will amend the EP&A Regulation to:

- transfer annual reporting requirements for planning agreements from the EP&A Act to the regulations,
- require that planning certificates specify any SEPP imposing a regional infrastructure contribution,
- clarify that councils' contributions registers are to include complying development certificates, and
- remove outdated requirement for councils to disclose outstanding obligations in annual financial reports (as reporting on past performance and current financial position is covered by existing provisions).

Rationale

These amendments aim to clarify existing policy, increase administrative efficiency and remove outdated provisions currently in the EP&A Regulation. These changes were not specifically recommended by the NSW Productivity Commissioner but will create a more efficient infrastructure contributions system.

Effect of the changes

- Increased transparency will make the infrastructure contributions system more certain for stakeholders and the community.
- These amendments will make it easier and simpler for practitioners and the public to navigate the contributions system.



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