



New South Wales

Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* to extend the means by which planning authorities (namely, councils, the Minister for Infrastructure and Planning and the corporation sole constituted by section 8 (1) of the Act) may obtain development contributions to be applied for the provision of public benefits. In addition to obtaining contributions towards public amenities and public services through the imposition of conditions of development consents as is currently provided for under section 94 of the Act, a planning authority will be specifically authorised to obtain development contributions through planning agreements.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [3] inserts proposed sections 93C–93I into Division 6 of Part 4 of the Act. That Division is renamed “Contributions for public purposes” by **Schedule 1 [2]**.

Proposed section 93C enables development contributions to be obtained from planning agreements, without limiting section 94.

As development contributions from the proposed planning agreements may be used for, or applied towards, any public purpose, proposed section 93D provides a definition of **public purpose**. It includes purposes authorised under section 94, affordable housing, infrastructure, cost recovery in providing public amenities and public services, the funding of recurrent expenditure relating to the provision of public amenities or public services, and monitoring the impacts of development.

Proposed section 93E enables planning authorities to enter into planning agreements with developers. The proposed section sets out the matters for which provision must be made in a planning agreement, the persons who may be parties to a planning agreement, the giving of public notice in relation to the making, amendment and revocation of planning agreements, and the relationship between planning agreements and both environmental planning instruments and existing development consents.

Proposed section 93F enables a planning agreement to be registered by the Registrar-General in relation to the land to which it applies and thereby to bind successors in title to the land.

Proposed section 93G requires a council to include particulars of current planning agreements to which it is a party in its annual report.

Proposed section 93H enables the regulations under the Act to make provision with respect to the form, subject-matter, making, amendment, revocation and public inspection of planning agreements.

Proposed section 93I provides that there does not have to be a connection between development the subject of a planning agreement and the object of expenditure of any money required to be paid under the agreement.

Schedule 1 [1] amends section 79C of the Act to require a consent authority to take into consideration any relevant planning agreement when determining a development application.

Schedule 1 [4] provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.



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New South Wales

Environmental Planning and Assessment Amendment (Planning Agreements) Bill 2003

No , 2003

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* with respect to planning agreements; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Environmental Planning and Assessment Amendment (Planning Agreements) Act 2003</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	8 9
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 1.	10 11

Schedule 1 Amendments

(Section 3)

[1] Section 79C Evaluation

Insert after section 79C (1) (a) (iii):

- (iiia) any planning agreement that has been entered into under section 93E and that relates to the development the subject of the development application, and

[2] Part 4, Division 6, heading

Omit the heading. Insert instead:

Division 6 Contributions for public purposes

[3] Sections 93C–93I

Insert before section 94:

93C Development contributions

- (1) A consent authority, or a planning authority within the meaning of section 93E, may, in the performance of its statutory functions, obtain a development contribution to be used for, or applied towards, any public purpose by:
 - (a) entering into a planning agreement under section 93E, or
 - (b) imposing a condition of a development consent under and in accordance with section 94,or both, subject to and in accordance with this Division.
- (2) Nothing in this Division derogates from or otherwise affects any provision of an environmental planning instrument, whether made before or after the commencement of this Division, with respect to the payment of money for the provision of public infrastructure, facilities or services.

93D Meaning of “public purpose”

For the purposes of this Division, *public purpose* includes:

- (a) any purpose for which land, a monetary contribution or a material public benefit may be used or applied under section 94, and

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Schedule 1 Amendments

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- (b) the provision of affordable housing and the maintenance of affordable housing, and 1
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- (c) the provision of public amenities or public services comprising infrastructure, including transport works and facilities, and 3
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- (d) recoupment of the cost of providing affordable housing, or any public amenities or public services, including by assisting in the making of repayments of a loan, and 6
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- (e) funding recurrent expenditure relating to the provision of affordable housing, or any public amenities or public services, and 9
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- (f) monitoring the impacts of development. 12
- 93E Planning agreements** 13
- (1) In this section, ***planning authority*** means: 14
- (a) a council, or 15
- (b) the Minister, or 16
- (c) the corporation. 17
- (2) A planning authority, or two or more planning authorities, may enter into an agreement (a ***planning agreement***) with a person (the ***developer***): 18
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- (a) who has sought an amendment (including by way of substitution, addition or repeal) of the provisions of an environmental planning instrument, whether in relation to the zoning of land, a development standard or a development control, or in some other respect, or 21
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- (b) who has made, or proposes to make, a development application, or 26
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- (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies, 28
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- requiring the dedication of land free of cost, the payment of a monetary contribution, or the provision of a material public benefit, or any combination of them, to be used for or applied towards any public purpose. 31
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- (3) A planning agreement must provide for the following: 35
- (a) the land to which the agreement applies, 36

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| (b) | a description of: | 1 |
| | (i) the proposed amendment of the environmental | 2 |
| | planning instrument, or | 3 |
| | (ii) the development to which the agreement applies, | 4 |
| (c) | the nature and extent of the provision to be made by the | 5 |
| | developer under the agreement, the time or times by | 6 |
| | which the provision is to be made and the manner by | 7 |
| | which the provision is to be made, | 8 |
| (d) | in the case of development, whether the agreement | 9 |
| | excludes or does not exclude the application of section | 10 |
| | 94 (1) and (3) to the development, | 11 |
| (e) | the resolution of disputes under the agreement, | 12 |
| (f) | the enforcement of the agreement by a suitable means, | 13 |
| | such as the provision of a bond or guarantee, in the | 14 |
| | event of a breach of the agreement by the developer. | 15 |
| (4) | A monetary contribution to be paid under a planning | 16 |
| | agreement is to be specified in, or determined in accordance | 17 |
| | with the manner specified in, the agreement. | 18 |
| (5) | Subsections (6), (7) and (8) of section 94 apply to a monetary | 19 |
| | contribution paid, or land dedicated, for a public purpose in | 20 |
| | accordance with a planning agreement in the same way as | 21 |
| | those subsections apply to a monetary contribution paid, or | 22 |
| | land dedicated, for public amenities or public services in | 23 |
| | accordance with a condition imposed under a provision of that | 24 |
| | section. | 25 |
| (6) | If a planning agreement excludes the application of section 94 | 26 |
| | (1) and (3) to development, a consent authority cannot impose | 27 |
| | a condition under either of those subsections in the | 28 |
| | determination of a development application or an application | 29 |
| | for a complying development certificate in respect of the | 30 |
| | development. | 31 |
| (7) | Any other Minister, or a public authority, or a person | 32 |
| | prescribed by the regulations for the purposes of this section, | 33 |
| | is entitled to be a party to a planning agreement and to receive | 34 |
| | a benefit under the agreement on behalf of the State. | 35 |

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Schedule 1 Amendments

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| (8) | A planning agreement must not be entered into, and a planning agreement must not be amended or revoked, unless public notice has been given of the proposed agreement, amendment or revocation, and a copy of the proposed agreement, amendment or revocation has been available for inspection by the public for a period of not less than 28 days. The regulations may provide for the public notice to be given under this subsection and may provide that it may be given contemporaneously with, in association with, or as part of, any other public notice or public notification that is required to be given of any matter relevant to the planning agreement. | 1
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| (9) | A planning agreement is void to the extent, if any, to which it requires or allows anything to be done that, when done, would breach the provisions of an environmental planning instrument or a development consent applying to the relevant land. | 12
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| (10) | Without limiting any other effect of a planning agreement, a planning agreement binds the owner of the land to which it applies, and any successor in title to the land, if the planning agreement is registered under section 93F. | 17
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| (11) | If the Minister is not a party to a planning agreement, the relevant planning authority must provide to the Minister: | 21
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| | (a) a copy of the agreement within 14 days after the agreement is entered into, and | 23
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| | (b) if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and | 25
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| | (c) if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs. | 27
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| (12) | If the Minister is the consent authority and the council is not a party to a planning agreement, the Minister must provide to the council: | 29
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| | (a) a copy of the agreement within 14 days after the agreement is entered into, and | 32
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| | (b) if the agreement is amended, a copy of the amendment within 14 days after the amendment is made, and | 34
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| | (c) if the agreement is revoked, notice of the revocation within 14 days after the revocation occurs. | 36
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93F Registered planning agreements to run with land

- (1) A planning agreement can be registered under this section if the following persons agree to its registration:
- (a) if the agreement relates to land under the *Real Property Act 1900*—each person who has an estate or interest in the land registered under that Act, or
- (b) if the agreement relates to land not under the *Real Property Act 1900*—each person who is seised or possessed of an estate or interest in the land.
- (2) On lodgement by a planning authority (within the meaning of section 93E) of an application for registration in a form approved by the Registrar-General, the Registrar-General is to register the planning agreement:
- (a) by making an entry in the Register kept under the *Real Property Act 1900* if the agreement relates to land under that Act, or
- (b) by registering the agreement in the General Register of Deeds if the agreement relates to land not under the *Real Property Act 1900*.
- (3) A planning agreement that has been registered by the Registrar-General under this section is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being were the owner who entered into the agreement.
- (4) A planning agreement relating to land under the *Real Property Act 1900* about which an entry is made in a folio is an interest recorded in the folio for the purposes of section 42 of that Act.
- (5) A reference in this section to a planning agreement is a reference to a planning agreement within the meaning of section 93E and includes a reference to any amendment or revocation of a planning agreement.

93G Annual reports

A council that has entered into one or more planning agreements as a consent authority must, while any such planning agreements remain in force, include in its annual

report under section 428 of the *Local Government Act 1993*
particulars of compliance with and the effect of the planning
agreements during the year to which the report relates.

93H Regulations—planning agreements

The regulations may make provision for or with respect to the
following:

- (a) the form of planning agreements,
- (b) the subject-matter of planning agreements,
- (c) the making, amendment and revocation of planning
agreements, including the giving of public notice and
inspection by the public,
- (d) the public inspection of planning agreements after they
have been made.

93I Nexus

A provision of a planning agreement under section 93E in
respect of development is not invalid by reason only that there
is no connection between the development and the object of
expenditure of any money required to be paid by the
provision.

[4] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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(Planning Agreements) Act 2003*