



New South Wales

## **Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023**

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Public Spaces, make the following Order under the *Environmental Planning and Assessment Act 1979*, section 7.24, with the concurrence of the Treasurer.

A handwritten signature in blue ink, reading "Ken Scruin".

Minister for Planning and Public Spaces

# Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023

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## **Part 1 Preliminary**

### **1 Name of Order**

This Order is the *Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023*.

### **2 Commencement**

This Order commences on 1 October 2023.

### **3 Interpretation**

- (1) Words and expressions used in this Order have the same meanings as in the Act and the Standard Instrument, unless otherwise defined in this Order.
- (2) Definitions of other words and expressions used in this Order, and provisions for the interpretation of this Order, are set out in Schedule 1.
- (3) Notes to this Order do not form part of this Order.

### **4 Regions to which Order applies**

This Order applies to land in the following regions—

- (a) the Central Coast region,
- (b) the Greater Sydney region,
- (c) the Illawarra-Shoalhaven region,
- (d) the Lower Hunter region.

**Note.** These regions are identified on a map approved by the Minister when making the Order and follow local government area boundaries. The regions do not include the Western Sydney Growth Areas and Western Sydney Aerotropolis special contributions areas to which the determinations under former section 7.23 of the Act will continue to apply until 1 July 2026.

## **Part 2 Development for which contribution is required and determination of contribution**

### **Division 1 Classes of development for which contribution is required**

#### **5 Development for which a contribution is required**

- (1) A housing and productivity contribution is required for development for which development consent is granted if it involves development of any of the following classes—
  - (a) residential development,
  - (b) commercial development,
  - (c) industrial development.
- (2) In this Order, **residential development** means any of the following—
  - (a) subdivision of land (other than strata subdivision) on which development for the purposes of residential accommodation is permitted with development consent by an environmental planning instrument applying to the land (**residential subdivision**),
  - (b) strata subdivision of residential accommodation (other than strata subdivision of high-density dwellings) (**residential strata subdivision**),
  - (c) high-density residential development,
  - (d) development for the purposes of a manufactured home estate.
- (3) For the purposes of subclause (2)(a), development for the purposes of residential accommodation is not permitted with development consent by an environmental planning instrument if the only kinds of residential accommodation permitted with development consent are any of the following—
  - (a) build-to-rent housing,
  - (b) a manufactured home estate,
  - (c) seniors living.
- (4) Schedule 2 sets out exemptions from the housing and productivity contribution. Development identified in Schedule 2 is not to be included in the determination of a housing and productivity contribution.
- (5) For the purposes of this Order, each class of development referred to in subclauses (1) and (2) is a **HPC class of development** and any development involving development within a HPC class of development is **HPC development**.

#### **6 Complying and concept development**

- (1) A housing and productivity contribution is required for development for which a complying development certificate is issued if it would be required when development consent is granted for the development.
- (2) A housing and productivity contribution is required for HPC development on a site for which development consent to a concept development application is granted, while that development consent is in force. However, the development consent to the concept development application may be granted subject to a

condition requiring a housing and productivity contribution only for the first stage of development for which detailed proposals have been set out in the application.

## Division 2 Housing and productivity contribution amounts

### 7 Base component amount

- (1) The base component amounts that apply to the calculation of the housing and productivity contribution are the amounts set out in the following table.

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	\$12,000	new dwelling lot
	Residential strata subdivision	\$10,000	new strata dwelling lot
	High-density residential development	\$10,000	new high-density dwelling
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA
Central Coast Illawarra-Shoalhaven Lower Hunter	Residential subdivision	\$8,000	new dwelling lot
	Residential strata subdivision	\$6,000	new strata dwelling lot
	High-density residential development	\$6,000	new high-density dwelling
	Manufactured home estate	\$6,000	new dwelling site
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA

- (2) Each of the amounts in the table to subclause (1) is an ***initial contribution amount*** for the purpose of this clause and clause 9.
- (3) The ***base component amounts*** that apply at any time during the 3-month period commencing 1 January 2024, and during each subsequent quarter, are the amounts that result from the adjustment of the initial contribution amounts by clause 9.

### 8 Other components

- (1) A strategic biodiversity component of a housing and productivity contribution is required in the circumstances set out in Schedule 3.
- (2) A transport project component of a housing and productivity contribution is required in the circumstances set out in Schedule 4.

### 9 Indexation of amounts

- (1) On 1 January 2024, and on the first day of each subsequent quarter, each initial contribution amount is adjusted by multiplying it by the following fraction—

$$\frac{\text{latest PPI number}}{\text{base PPI number}}$$

where—

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**latest PPI number** is the PPI number for the second-last quarter before the quarter in which the adjustment is made, and

**base PPI number** is the PPI number for the June quarter 2023.

**Note.** On 1 January 2024, when the first adjustment occurs, the latest PPI number will be the PPI number for the September quarter 2023. On 1 April 2024 the latest PPI number will be the PPI number for the December quarter 2023. On 1 July 2024 the latest PPI number will be the PPI number for the March quarter 2024. On 1 October 2024 the latest PPI number will be the PPI number for the June quarter 2024, and so on.

- (2) However, if the adjustment of the initial contribution amount under this clause would result in a base component amount, SBC amount or TPC amount that is less than that for the preceding quarter, the amount for that preceding quarter continues to apply.
- (3) The initial contribution amount as adjusted by this clause is an amount to the number of decimal places that the NSW planning portal is capable of storing (**adjusted contribution amount**).
- (4) The Planning Secretary is to publish on the NSW planning portal information about the amounts for each quarter, as adjusted by operation of this clause. The Planning Secretary may publish the adjusted contribution amount to only two decimal places, with rounding that the Secretary considers appropriate.
- (5) In this clause, **quarter** means each of the following three-month periods in a calendar year—
  - (a) March quarter—1 January to 31 March (Q1),
  - (b) June quarter—1 April to 30 June (Q2),
  - (c) September quarter—1 July to 30 September (Q3),
  - (d) December quarter—1 October to 31 December (Q4).

### **Division 3 Determination and calculation of contributions**

#### **10 Determination of housing and productivity contribution**

- (1) The housing and productivity contribution for HPC development is the sum of the amounts calculated in accordance with this Division for each HPC class of development involved in the development.
- (2) If a calculation in accordance with this Division results in a negative value, the amount or number is taken to be zero.
- (3) The amount of the housing and productivity contribution must be adjusted in accordance with the conditions required to be imposed by clause 22.
- (4) The Planning Secretary may, through the NSW planning portal, establish an electronic form for the calculation of the housing and productivity contribution.

#### **11 Calculation of contribution for development in each HPC class of development**

- (1) The amount of the housing and productivity contribution that is payable for each HPC class of development involved in the development is the sum of—
  - (a) the base component amount for the HPC class multiplied by the number of HPC units for that class of development,

- (b) the SBC amount for the HPC class multiplied by the number of HPC units for that class of development, and
- (c) the TPC amount for the HPC class multiplied by the number of HPC units for that class of development.

**Note.** The table to clause 7 sets out the base component amount, Schedule 3 sets out the SBC amount and Schedule 4 sets out the TPC amount, as at the commencement of this Order.

- (2) In this clause, a reference to the HPC units for a class of development is a reference to the units authorised by the development consent for the development.

## **12 Calculation of HPC units for residential subdivision**

- (1) The number of new dwelling lots for residential subdivision is the number of lots authorised by the development consent, less—
  - (a) the number of existing potential dwelling lots, and
  - (b) the number of excluded lots.
- (2) An **existing potential dwelling lot** is a lot—
  - (a) that exists when the development application for the HPC development is made, and
  - (b) on which residential accommodation is permitted with development consent by an environmental planning instrument applying to the land when the development consent is granted.
- (3) A proposed lot is an **excluded lot** if—
  - (a) it is shown on the proposed plan of subdivision as intended to be dedicated for a public purpose such as a public road, public reserve or drainage reserve, or
  - (b) the development consent authorises only the carrying out of development for a purpose other than residential accommodation on the lot, or
  - (c) there is an existing building on the lot that—
    - (i) is used for a purpose other than residential accommodation, and
    - (ii) is not authorised to be demolished by the development consent, or
  - (d) it is a lot that is association property within the meaning of the *Community Land Development Act 2021*, or
  - (e) it is only created for the purpose of rectifying an encroachment on an existing lot.

## **13 Calculation of HPC units for residential strata subdivision**

- (1) The number of new strata dwelling lots for a residential strata subdivision of a building is the number of strata dwelling lots in the building that will result from carrying out the strata subdivision in accordance with the development consent, less—
  - (a) the number of any existing strata dwelling lots in the building when the development application was made, and



- (b) the number of existing lots on which the building is to be erected when the development application was made.
- (2) If the development consent authorises the residential strata subdivision of more than one building, the amount that is payable for the residential strata subdivision is the sum of the amounts calculated in accordance with this clause.
- (3) In this clause—
  - (a) **strata dwelling lot** means a strata lot that contains or will contain a dwelling, and
  - (b) a reference to the residential strata subdivision of a building includes the creation of a single lot for the building, and the creation of a strata lot that extends beyond the building.

#### **14 Calculation of HPC units for high-density residential development**

- (1) The number of new high-density dwellings for a high-density residential development is the number of high-density dwellings on the land that will result from carrying out the development in accordance with the development consent, less the number of existing lots when the development application was made.
- (2) A housing and productivity contribution is not required for the strata subdivision of high-density residential development.

#### **15 Calculation of HPC units for manufactured home estate**

- (1) The number of new dwelling sites for a manufactured home estate is the number of dwelling sites in the manufactured home estate, less the number of any existing dwelling sites.
- (2) A housing and productivity contribution is not required for the subdivision of the land on which the manufactured home estate is located.

#### **16 Calculation of HPC units for commercial development**

- (1) The new gross floor area of commercial development is the sum of the gross floor areas of the commercial buildings to which the development consent relates.
- (2) For the purpose of subclause (1), the gross floor area of a commercial building to which the development consent relates is—
  - (a) in the case of the erection of a new building—the gross floor area of the building, and
  - (b) in the case of the alteration to, or enlargement or extension of, an existing building—the additional gross floor area that will result from the alteration, enlargement, or extension, and
  - (c) in the case of a change of use of an existing building to a commercial building—the gross floor area of the building that will be changed to use as a commercial building.
- (3) If a building can be used for residential accommodation as well as being in part a commercial building, the gross floor area of any common area (such as a common foyer) is to be included in the new gross floor area of the commercial building.

**Note.** An example of a building that is both a commercial building and a residential building is one that contains shop top housing, or hotel accommodation as well as residential flats.

- (4) The gross floor area of a commercial building does not include the gross floor area of a part of the building that may be used for development other than commercial development.
- (5) A change of use from one type of commercial building to another type of commercial building is not to be treated as a change of use for the purposes of this clause.

#### **17 Calculation of HPC units for industrial development**

- (1) The new gross floor area of the industrial development is the sum of the gross floor areas of the industrial buildings to which the development consent relates.
- (2) For the purposes of subclause (1), the gross floor area of an industrial building to which the development consent relates is—
  - (a) in the case of the erection of a new building—the gross floor area of the building, and
  - (b) in the case of the alteration to, or enlargement or extension of, an existing building—the additional gross floor area that will result from the alteration, enlargement or extension, and
  - (c) in the case of the change of use of an existing building to use as an industrial building—the gross floor area of the building that will be changed to the new use.
- (3) The gross floor area of an industrial building does not include the gross floor area of a part of the building that may be used for development other than industrial development.
- (4) A change of use from one type of industrial building to another type of industrial building is not to be treated as a change of use for the purposes of this clause.

#### **18 Calculation of contribution if development in more than one region etc**

- (1) This clause applies to the following HPC development—
  - (a) HPC development that is in more than one region,
  - (b) HPC development that is only partly on land for which a strategic biodiversity component or transport project component is required.
- (2) If the HPC development is in more than one region, the housing and productivity contribution is—
  - (a) to be determined separately for each part of the development in a different region, and
  - (b) the sum of those separately determined amounts.
- (3) If the HPC development is only partly on land for which a strategic biodiversity component or transport project component is required, the housing and productivity contribution is—
  - (a) to be separately determined for that part of the development, and
  - (b) the sum of the separately determined amounts.

- (4) However, if a building or proposed building or a proposed lot in a subdivision in a HPC development referred to in subclause (2) or (3) straddles—
  - (a) the boundary of 2 or more regions—it is to be treated as wholly within the region to which the highest base component amount applies, and
  - (b) land for which a strategic biodiversity component is required and other land in the region—it is to be treated as wholly on land for which the strategic biodiversity component is required, and
  - (c) land for which a transport project component is required and other land in the region—it is to be treated as wholly on land for which the transport project component is required (to the extent that it is residential development or commercial development).

## **Part 3 Nature of contributions and time to be made**

### **19 Nature of contributions**

- (1) A housing and productivity contribution is to be made as a monetary contribution.
- (2) Despite subclause (1), a housing and productivity contribution may, with the agreement of the Minister, be made in the following ways—
  - (a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the HPC development will be carried out,
  - (b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.
- (3) A housing and productivity contribution made in accordance with subclause (2) must, together with any monetary contribution, be at least equivalent in value to the amount of the contribution otherwise payable. The agreement with the Minister is to set out the value of the non-monetary contribution or how it is to be determined.
- (4) Subclause (2) does not apply in relation to a contribution imposed as a condition of a complying development certificate or any transport project component of the contribution.

### **20 Time by which a housing and productivity contribution must be made**

- (1) The housing and productivity contribution for HPC development must be paid before the issue of the first construction certificate in relation to the development or before the commencement of any work authorised by the development consent (if no construction certificate is required), unless otherwise provided by this clause.
- (2) The housing and productivity contribution for HPC development that consists only of residential subdivision is to be paid before the issue of the first subdivision certificate in relation to the development.
- (3) The housing and productivity contribution for HPC development that consists only of—
  - (a) residential strata subdivision, or
  - (b) residential strata subdivision and a change of use of an existing building,must be paid before the issue of the first strata certificate relating to the residential strata subdivision.
- (4) If no construction certificate is required for high-density residential development, the housing and productivity contribution must be paid before the issue of the first strata certificate relating to the development.
- (5) The housing and productivity contribution for HPC development that consists of a manufactured home estate must be paid before the installation of the first manufactured home on a dwelling site, if no construction certificate is required in connection with the development.

### **21 Timing if residential subdivision is staged**

- (1) This clause applies to the payment of a housing and productivity contribution for HPC development that consists only of residential subdivision and is not complying development for which a complying development certificate is issued.
- (2) Despite clause 20, if a subdivision certificate is sought for a plan of subdivision that would create only some of the lots that may be created under the development consent for the residential subdivision, the monetary contribution for the subdivision may be paid progressively.
- (3) An instalment is to be paid before the issue of each subdivision certificate for a plan of subdivision authorised by the consent (a ***subdivision certificate for a staged subdivision***).
- (4) The amount of the instalment that is to be paid before the issue of each subdivision certificate for a staged subdivision is to be calculated as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision permitted by the development consent.

## Part 4 Conditions of development consent

### 22 Terms of conditions for housing and productivity contribution

- (1) A condition requiring a housing and productivity contribution to be made must be imposed on development consent for HPC development, but the requirement to make the contribution must be expressed as being subject to—
  - (a) any exclusion of the application of Subdivision 4 of Division 7.1 of the Act to the development by a planning agreement, and
  - (b) any exemption or reduction provided by this Order.

**Note.** A planning agreement may exclude the application of the housing and productivity contribution provisions of the Act to the development to which the agreement applies—section 7.4 of the Act.

- (2) The consent authority or certifier must specify the following in the conditions of development consent—
  - (a) the amount of the housing and productivity contribution as at the date development consent is granted, rounded up to the nearest whole cent,
  - (b) the amount of any strategic biodiversity component or transport project component of the contribution, rounded up to the nearest whole cent,
  - (c) the time by which the housing and productivity contribution must be made,
  - (d) the manner in which the amount of the housing and productivity contribution, as specified in the consent, is to be adjusted at the time of payment,
  - (e) the payment must be made using the NSW planning portal,
  - (f) except in the case of a complying development certificate, if an agreement is entered into as referred to in clause 19, the housing and productivity contribution may be made wholly or partly as a non-monetary contribution (apart from any transport project component),
  - (g) if the development consent is granted to a concept development application, a condition specifying that a housing and productivity contribution—
    - (i) may be payable for development on the site the subject of a subsequent development application, and
    - (ii) is to be determined in accordance with the applicable Ministerial planning order under Subdivision 4 of Division 7.1 of the Act, as in force at the time the consent to the subsequent development application is granted.
- (3) If the development is a residential subdivision to which clause 21 applies, the consent authority must also specify the following in the conditions of consent—
  - (a) payment of the housing and productivity contribution may be made in instalments as provided in that clause,
  - (b) the amount of each instalment, as at the date development consent is granted, that must be paid before the issue of each subdivision certificate for the staged subdivision,

- (c) the manner in which the amount of each instalment is to be adjusted at the time of payment.
- (4) For the purpose of complying with subclause (2)(d) and subclause (3)(c), the conditions of consent must specify that the contribution amount set out in the consent or the amount of each instalment, as the case may be, is to be adjusted at the time of payment by multiplying it by the following fraction—

$$\frac{\text{highest PPI number}}{\text{consent PPI number}}$$

where—

**highest PPI number** is the highest PPI number for a quarter following the June quarter 2023 up to and including the 2<sup>nd</sup> last quarter before the quarter in which the payment is made.

**consent PPI number** is the PPI number last used to adjust the base component amount, SBC amount or TPC amount when consent was granted.

**June quarter 2023** is the quarter commencing on and including 1 April 2023 and ending on and including 30 June 2023.

**PPI** is the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics.

The conditions of consent are also to specify that, if the adjustment of a contribution amount or amount of an instalment results in a lesser amount, the contribution amount or amount of the instalment set out in the consent must be paid instead.

- (5) A consent authority or certifier is to use the NSW planning portal to assist in determining conditions requiring the housing and productivity contribution.

## Schedule 1 Definitions and interpretation

### 1 Definitions

In this Order—

**base component amount** means a base component amount set out in clause 7, as it is adjusted by clause 9.

**build-to-rent housing** means development to which Part 4 of Chapter 3 of *State Environmental Planning Policy (Housing) 2021* applies and for which development consent is granted in accordance with that Part to enable certain residential accommodation to be used for build-to-rent housing.

**Central Coast region** means the region of that name shown on the HPC Regions Map.

**commercial building** means a building, or part of a building, that is used or may be used for the purpose of commercial development.

**commercial development** means development for any of the following purposes—

- (a) amusement centre,
- (b) animal boarding or training establishment,
- (c) centre-based child care facility,
- (d) co-living housing,
- (e) commercial premises (being business premises, office premises or retail premises),
- (f) entertainment facility,
- (g) function centre,
- (h) highway service centre,
- (i) marina,
- (j) medical centre,
- (k) registered clubs,
- (l) restricted premises,
- (m) service station,
- (n) sex services premises,
- (o) tourist and visitor accommodation, other than bed and breakfast accommodation and farm stay accommodation,
- (p) veterinary hospital,
- (q) wholesale supplies.

**Note.** See the Standard Instrument for definitions of the above terms.

**construction certificate** means a construction certificate within the meaning of the Act, but includes a certificate required to be obtained by the Crown for Crown building work under section 6.28 of the Act.



**Greater Sydney region** means the region of that name identified on the HPC Regions Map.

**high-density dwelling** means a dwelling (or independent living unit) in any of the following types of residential accommodation—

- (a) build-to-rent housing,
- (b) residential flat building,
- (c) shop top housing,
- (d) seniors living consisting of a group of independent living units.

**high-density residential development** means development for the purposes of any of the following—

- (a) build-to-rent housing,
- (b) residential flat building,
- (c) shop top housing,
- (d) seniors living consisting of a group of independent living units.

**HPC Regions Map** means the map marked “Housing and Productivity Contribution Regions Map” that is—

- (a) approved by the Minister on the making of this Order for the purpose of identifying the regions to which the Order applies, and
- (b) published on the NSW planning portal.

**HPC unit** means, in relation to a HPC class of development, a unit of the kind specified opposite that class in the table to clause 7(1).

**Illawarra-Shoalhaven region** means the region of that name shown on the HPC Regions Map.

**industrial building** means a building, or part of a building, that is used or may be used for the purpose of industrial development.

**industrial development** means development for any of the following purposes—

- (a) industrial training facility,
- (b) industry (being general industry, heavy industry or light industry),
- (c) storage premises,
- (d) warehouse or distribution centre.

**Note.** See Standard Instrument for definitions of all of the above terms.

**land** includes part of the land.

**lot** means a lot that is created upon the registration in the Office of the Registrar-General of a plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919*.

**Note.** A stratum lot, being a lot that is limited in height or depth (or both), may also be created by a plan of subdivision as referred to in section 195 of the *Conveyancing Act*.

**Lower Hunter region** means the region of that name shown on the HPC Regions Map.

**manufactured home estate** means a manufactured home estate in respect of which development consent is granted under Part 8 of *State Environmental Planning Policy (Housing) 2021*.

**new dwelling lot**—see clause 12.

**new dwelling site**—see clause 15.

**new gross floor area** or **new GFA**—see clauses 16 and 17.

**new high-density dwelling**—see clause 14.

**new strata dwelling lot**—see clause 13.

**pending development application** means—

- (a) a development application that is made, but not determined, before the commencement of this Order, or
- (b) a development application that is made and determined before the commencement of this Order, but has not been finally determined, or
- (c) an application for a complying development certificate that is made, but not determined, before the commencement of this Order.

**PPI** means the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics.

**residential accommodation** has the same meaning as in the Standard Instrument, but does not include co-living housing.

**residential strata subdivision**—see clause 5 (2) (b).

**residential subdivision**—see clause 5 (2) (a).

**SBC amount**—see Schedule 3.

**social housing provider** has the same meaning as in *State Environmental Planning Policy (Housing) 2021*.

**Note.** A social housing provider is any of the following—the Secretary of the Department of Communities and Justice, the Land and Housing Corporation, a registered community housing provider, the Aboriginal Housing Office, a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*, a local government authority that provides affordable housing and a not-for-profit organisation that is a direct provider of rental housing to tenants.

**Standard Instrument** means the standard instrument set out in the *Standard Instrument (Local Environmental Plans) Order 2006*.

**strata certificate** has the same meaning as in the *Strata Schemes Development Act 2015*.

**strata lot** means a lot within the meaning of the *Strata Schemes Development Act 2015*, being a lot that is created upon the registration in the Office of the Registrar-General of a strata plan or strata plan of subdivision.

**strata subdivision** means the subdivision of land within the meaning of the Act by procuring the registration of a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes Development Act 2015*.

**subdivision certificate**—see Part 6 of the Act.

**the Act** means the *Environmental Planning and Assessment Act 1979*.

**TPC amount**—see Schedule 4.

## **2 Former SIC provisions**

In this Order, the following words and expressions have the same meaning as they have in Schedule 4 to the Act—

- (a) 7.23 determination,
- (b) 7.24 direction,
- (c) former section 7.23,
- (d) former section 7.24,
- (e) former SIC provisions.

## **3 Gross floor area**

In this Order, **GFA** and **gross floor area** mean gross floor area within the meaning of the Standard Instrument.

## **4 Producer Price Index ceases to be published**

If the Producer Price Index (Road and Bridge Construction (NSW)) ceases to be published or issued by the Australian Bureau of Statistics, a reference in this Order to the index is taken to be a reference instead to an index designated by the Minister for the purposes of this Order.

## **5 Issue of complying development certificates**

In this Order, **development consent** includes a complying development certificate and a reference to—

- (a) the grant of development consent includes a reference to the issue of a complying development certificate, and
- (b) a development application includes a reference to an application for a complying development certificate,

unless the context or subject matter otherwise indicates or requires.

## **Schedule 2 Exemptions from housing and productivity contribution**

### **1 Public and affordable housing and other specialist accommodation**

- (1) Development for any of the following purposes is exempt—
- (a) public housing provided by or on behalf of the Land and Housing Corporation or the Aboriginal Housing Office,
  - (b) affordable housing that—
    - (i) is provided by or on behalf of a social housing provider, or
    - (ii) is required to be managed by a registered community housing provider by conditions of development consent prescribed by section 82 or section 84 of the *Environmental Planning and Assessment Regulation 2021*,
  - (c) dwellings required to be dedicated, free of cost, for the purpose of providing affordable housing under section 7.32 of the Act,
  - (d) supportive accommodation within the meaning of section 34 of *State Environmental Planning Policy (Housing) 2021*,
  - (e) specialist disability accommodation within the meaning of the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* of the Commonwealth,
  - (f) boarding houses,
  - (g) group homes,
  - (h) hostels,
  - (i) seniors housing other than a group of independent living units.
- (2) In this clause, a reference to development includes a proposed lot, proposed strata lot or proposed dwelling site for a purpose in subclause (1).

### **2 Development in Lease Area—Ports**

Development on land in a Lease Area within the meaning of Chapter 5 of *State Environmental Planning Policy (Transport and Infrastructure) 2022* is exempt.

**Note.** “Lease Areas” are located within Port Botany, Port Kembla and Port of Newcastle.

### **3 Development only partly within a region or Lease Area**

- (1) If a development consent permits HPC development on land that is—
- (a) partly in a region and partly outside any region, or
  - (b) only partly in a Lease Area within a region,
- the housing and productivity contribution is to be determined only for that part of the development on land within the region or on land that is not within the Lease Area, respectively.
- (2) For the purpose of calculating the housing and productivity contribution for HPC development referred to in this clause that—
- (a) involves subdivision of land—
    - (i) the number of existing potential dwelling lots includes any such lot that is partly outside a region or only partly within a Lease Area, and

- (ii) any proposed lot that will result from the subdivision and is located partly within and partly outside the region or the Lease Area is to be treated as lying wholly outside the region or the Lease Area, and
- (b) involves the erection of a building, or is residential strata subdivision or high-density residential development involving a building, that is only partly outside the region or the Lease Area—the building is to be treated as being located wholly outside the region or the Lease Area.

### **Schedule 3 Strategic biodiversity components**

This Schedule was blank on the commencement of the Order.

## Schedule 4 Transport project components

### Division 1 Pyrmont Peninsula (Sydney Metro)

- (1) A transport project component is required for HPC development on land in the Pyrmont Peninsula (Sydney Metro) Area, which is the area that will benefit from the Sydney Metro Pyrmont Station and its associated infrastructure.
- (2) A transport project component is required only if the development concerned is, partly or wholly, within the Pyrmont Peninsula (Sydney Metro) Area when development consent for the HPC development is granted.
- (3) The TPC amounts that apply to the calculation of the housing and productivity contribution are the amounts set out in the following table.

HPC class of development	Amount	HPC Unit
Residential subdivision	\$15,000	new dwelling lot
Residential strata subdivision	\$15,000	new strata dwelling lot
High-density residential development	\$15,000	new high-density dwelling
Commercial development	\$200	square metre of new GFA

- (4) Each of the dollar amounts in the table to subclause (2) is an **initial contribution amount** for the purpose of this Schedule and clause 9.
- (5) The TPC amounts for Pyrmont Peninsula that apply at any time during the 3-month period commencing 1 January 2024, and during each subsequent quarter, are the amounts that result from the adjustment of the initial contribution amounts by clause 9 each quarter.
- (6) In this Schedule —

**Pyrmont Peninsula (Sydney Metro) Area** means land identified as 'Pyrmont Peninsula transport project component' on the Housing and Productivity Contribution Transport Project Component – Pyrmont Peninsula (Sydney Metro) Map, being the map with that title that is—

- (a) approved by the Minister on the making of this Order for the purpose of identifying the land to which the transport project component for Sydney Metro Pyrmont Station applies, and
- (b) published on the NSW planning portal.

## Schedule 5 Savings and transitional arrangements

### Division 1 General

#### 1 Interpretation

In this Schedule—

**continued 7.23 determination** means a 7.23 determination that—

- (a) has been continued in force by Part 1 of Schedule 4 to the Act, and
- (b) is not repealed by this Order.

**continued 7.24 direction** means a 7.24 direction that—

- (a) has been continued in force by Part 1 of Schedule 4 to the Act, and
- (b) is not repealed by this Order.

**continuing SCA** means a special contributions area to which a continued 7.23 determination and a continued 7.24 direction apply.

**former 7.23 determination** means a 7.23 determination that is repealed by this Order.

**former 7.24 direction** means a 7.24 direction repealed by this Order.

**former SCA** means a special contributions area to which a former 7.23 determination and a former 7.24 direction applied.

**special contributions area** means a special contributions area within the meaning of the Division 7.1 of the Act, as in force immediately before the commencement of the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023*.

#### 2 Application to pending DAs

This Order does not apply to a development consent granted to a pending development application.

#### 3 Discount—first 21 months

- (1) If a housing and productivity contribution required by this Order is paid—
  - (a) before 1 July 2024, the amount is reduced by 50%, and
  - (b) between 1 July 2024 and 30 June 2025, the amount is reduced by 25%.
- (2) A reduction in subclause (1) does not apply to:
  - (a) a transport project component of a housing and productivity contribution, or
  - (b) a housing and productivity contribution that is made wholly or partly as a non-monetary contribution.
- (3) If a transport project component of a housing and productivity contribution is paid at any time before 1 July 2024, the amount is reduced by 25%.
- (4) A reference in this clause to a housing and productivity contribution includes a reference to an instalment of a contribution.

#### 4 Discount—concept consents and subsequent development applications

A housing and productivity contribution for HPC development is reduced by 100% if—



- (a) development consent applying to the land was granted to a concept development application before the commencement of this Order, or is granted to a concept development application that is a pending development application (**concept consent**), and
- (b) the HPC development is a stage of the development to which the concept consent relates, and
- (c) but for the requirement in clause 20 to make the housing and productivity contribution before the issue of a certificate under that clause, the certificate could have been issued before 1 July 2025.

## **5 Discount—provision of contribution before the commencement of this Order**

- (1) The Planning Secretary may certify that—
  - (a) before the commencement of this Order, a contribution to the provision of State or regional infrastructure has been made in relation to development on land, or a change to an environmental planning instrument applying to land, and
  - (b) the contribution was a special infrastructure contribution or was made under a planning agreement or other arrangement.
- (2) A certificate under subclause (1) may specify either or both of the following—
  - (a) the area of land or number of lots that, in the opinion of the Planning Secretary, were subject to the contribution, and
  - (b) whether, in the opinion of the Planning Secretary, the housing and productivity contribution required for the HPC development should be reduced having regard to the contribution.
- (3) A certificate under this clause is to be published on the NSW planning portal.
- (4) The housing and productivity contribution required for HPC development is to—
  - (a) be determined by excluding the land or lots specified in a certificate under this clause, and
  - (b) otherwise be reduced in accordance with a certificate under this clause.
- (5) An exclusion or reduction under this clause may occur at any time before the housing and productivity contribution is required to be paid.
- (6) The Planning Secretary is not to issue a certificate under this clause on or after 1 July 2026.

## **Division 2 Former SIC determinations**

### **6 Repeal of 7.23 determinations and 7.24 directions**

The following 7.23 determinations and associated 7.24 directions are repealed—

<b>Former SCA</b>	<b>Former 7.23 determination</b>	<b>Former 7.24 direction</b>
Bayside West SCA	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Bayside West) Determination 2020</i>	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Bayside West) Direction 2020</i>

Frenchs Forest SCA	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) Determination 2021</i>	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) Direction 2021</i>
Gosford City Centre SCA	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Determination 2018</i>	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Gosford City Centre) Direction 2018</i>
Illawarra Shoalhaven SCA	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021</i>	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Direction 2021</i>
Pymont Peninsula SCA	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Pymont Peninsula Metro) Determination 2022</i>	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Pymont Peninsula Metro) Direction 2022</i>
St Leonards and Crows Nest SCA	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Determination 2020</i>	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Direction 2020</i>
Warnervale Town Centre SCA	Determination made 30 October 2008 of level and nature of contribution, calculated in accordance with the plan headed “Special Infrastructure Contributions Plan Warnervale Town Centre – Special Contributions Area”	Direction given to Wyong Shire Council to impose condition in accordance with the plan for Warnervale Town Centre
Wyong Employment Zone SCA	Determination made 28 October 2008 of level and nature of contribution, calculated in accordance with the plan headed “Special Infrastructure Contributions Plan Wyong Employment Zone – Special Contributions Area”	Direction to Wyong Shire Council to impose condition in accordance with the plan for Wyong Employment Zone.

## 7 Continuation of 7.23 determinations and 7.24 directions

The following 7.23 determinations and 7.24 directions are continued 7.23 determinations and continued 7.24 directions—

Continuing SCA	Continued 7.23 determination	Continued 7.24 direction
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Western Sydney Aerotropolis SCA	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Aerotropolis) Determination 2022</i>	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Aerotropolis) Direction 2022</i>
Western Sydney Growth Areas SCA	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011</i>	<i>Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Direction 2020</i>

## 8 Effect of repeal

- (1) Despite the repeal of a former 7.23 determination and a former 7.24 direction, the determination and direction continue to apply in relation to a pending development application.
- (2) For the purpose of subclause (1), if development consent is granted after the repeal of the former 7.23 determination, a condition of consent set out in the former 7.24 direction that requires a special infrastructure contribution to be made in accordance with a former 7.23 determination as in force when the development consent takes effect is taken to require a special infrastructure contribution to be made in accordance with the former 7.23 determination as in force immediately before its repeal.
- (3) Any condition of development consent imposed in accordance with a former 7.24 direction (as varied by subclause (2)), or by the Minister in accordance with former section 7.24—
  - (a) is not affected by the repeal of the former 7.24 direction or the repeal of former section 7.24, and
  - (b) the former 7.23 determination referred to in the condition of consent continues to apply in relation to that condition.
- (4) If a consent authority or registered certifier fails to impose a condition in accordance with a former 7.24 direction, the condition—
  - (a) is taken to be imposed in the terms required by the direction (subject to subclause (2)), and
  - (b) has effect as if had been imposed by the consent authority or registered certifier, as provided for by former section 7.24 (3) of the Act.

## 9 Special infrastructure contributions works-in-kind agreements

- (1) A special infrastructure contributions works-in-kind agreement (as defined in a former 7.23 determination) (a **SIC WIK agreement**) is not affected by the repeal of the former SIC provisions, or the repeal of a former 7.23 determination or former 7.24 direction, except as provided by this clause.
- (2) A reference in a former SIC WIK agreement to a special infrastructure contribution is to be read as including a reference to a housing and productivity contribution, if the reference is used in, or in relation to, provisions that allow the

developer to apply a SIC discharge balance, as defined in the agreement, to meet an obligation to make a special infrastructure contribution that may be required to be made by a future condition of development consent.

- (3) A SIC discharge balance cannot be applied, by virtue of subclause (2), to meet an obligation to make a housing and productivity contribution in respect of development on land outside the former SCA to which the former SIC WIK agreement relates. However, this clause does not prevent a SIC WIK agreement being expressly amended for that purpose.
- (4) A former SIC WIK agreement is taken to be an agreement referred to in clause 19 in so far as this clause allows a SIC discharge balance to be applied to meet an obligation to make a housing and productivity contribution.
- (5) A SIC WIK agreement may be entered into, as provided for in a former 7.23 determination, after the commencement of this Order, and despite the repeal of the former 7.23 determination, in relation to a special infrastructure contribution imposed by a condition of development consent.
- (6) Nothing in this clause prevents a SIC WIK agreement entered into after the commencement of this Order also providing that it is an agreement for the purposes of clause 19 so as to enable future housing and productivity contributions to be met by applying a SIC discharge amount.
- (7) In this clause, **former SIC WIK agreement** means a SIC WIK agreement that was entered into before the commencement of this Order.

## **10 Development that straddles a continuing or former SCA and region**

- (1) This clause applies to development that is:
  - (a) partly within a continuing SCA and partly within an adjacent region, or
  - (b) partly within a former SCA, but also within a region, and the subject of a pending development application.
- (2) The special infrastructure contribution and the housing and productivity contribution for the development are to be determined separately for that part of the development within the continuing SCA or former SCA, and that part of the development only within the region, respectively. The total amount payable in respect of the development is the sum of those separately determined amounts.
- (3) However, if a building or proposed building, or a proposed lot in a residential subdivision, to which the development consent relates straddles the boundary of the continuing SCA or former SCA, it is to be treated as wholly or only within the region (and not the SCA) for the purpose of calculating any special infrastructure contribution and housing and productivity contribution, respectively, for the development authorised by the development consent.
- (4) Clause 3 of Schedule 2 does not apply to a development to which this clause applies.
- (5) The conditions of consent for the development are to include both the conditions required by the applicable direction under former section 7.24 and the conditions required by this Order.

**11 Concept development application—conditions**

- (1) If development consent has been granted to a concept development application before the commencement of this Order (***initial development consent***), a subsequent development consent for a stage of the development to which the initial development consent relates and that is HPC development must include the conditions required by clause 22.
- (2) The requirement in subclause (1) extends to an initial development consent that contains conditions requiring the imposition of special infrastructure contributions for subsequent stages of development on the site, in accordance with a former 7.24 direction and, accordingly, a special infrastructure contribution is not required for a subsequent stage.