



Regional Infrastructure Contributions Proposed State Environmental Planning Policy

Explanation of Intended Effect

October 2021



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Regional Infrastructure Contributions Proposed State Environmental Planning Policy

First published: October 2021

Department reference number: SF21/101792

© State of New South Wales through Department of Planning, Industry and Environment 2021. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose provided you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (October 2021) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Summary

- The government introduced the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* into Parliament on 22 June 2021 to give effect to recommendations of the Productivity Commissioner in his Review of infrastructure Contributions in New South Wales, released in December 2020.
- A key reform introduced by the Bill is a new framework for regional infrastructure contributions to meet the cost of regional infrastructure provided by the NSW Government, such as major roads, schools and regional parklands. Under the new framework, a State Environmental Planning Policy will be able to be made to require regional infrastructure contributions.
- The proposed *State Environmental Planning Policy (Regional Infrastructure Contributions) 2021* will identify 4 regions of NSW – Greater Sydney, Lower Hunter, Illawarra-Shoalhaven and Central Coast – where regional infrastructure contributions will be payable.
- The trigger for a regional infrastructure contribution will be a new residential, commercial or industrial development for which development consent or complying development certificate is required. The description of commercial and industrial development will be broad, covering a wide range of development types and reflecting the Productivity Commissioner’s recommendation that the new regional infrastructure contribution be a flat broad-based charge payable across a region.
- The proposed Policy will include important exemptions for public housing, affordable housing (including hostels and secondary dwellings) and seniors housing, as well as other types of residential accommodation to encourage housing diversity.
- The regional infrastructure contribution will generally be based on the number of dwellings in a development or the new gross floor area resulting from the development in the case of commercial and industrial development. In addition, in newly released urban areas (‘greenfield’ areas), a regional infrastructure contribution will be payable for subdivision, based on the number of lots in the subdivision on which housing will potentially be built.
- Across the regions, the same rates of \$30 per square metre of new floor area for commercial development and \$15 per square metre of gross floor area for industrial development will apply, as recommended by the Productivity Commissioner. The rates for residential development within Greater Sydney will also be generally consistent with the Commissioner’s recommendations, being \$12,000 for a dwelling house and \$10,000 for residential flat buildings and other forms of higher density housing. However, a lower rate than that proposed by the Commissioner will apply for dwelling houses in the other regions - \$8,000 rather than \$10,000 for dwelling houses and \$6,000 rather than \$8,000 for residential flat buildings and other forms of higher density housing.
- The new contribution will not be required to be paid until before the issue of the first occupation certificate relating to the development, except where subdivision is involved. In that case, it will need to be paid before the issue of the subdivision certificate.
- This Explanation of Intended Effect sets out the detail of the proposed Policy for the purposes of public consultation. Submissions from the public are invited during the exhibition period.

Acknowledgment of Country

The Department of Planning, Industry and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

Contents

1. Introduction.....	1
2. Overview of the proposed RIC SEPP.....	2
3. Where will the RIC apply?.....	3
Exclusion of development in limited areas.....	5
4. Types of development to which the RIC will apply	5
Exemptions from RIC – residential development.....	6
5. How will the RIC be calculated?.....	7
Residential development and subdivision	7
Commercial or industrial development	7
6. Calculation of the RIC for residential development	8
General.....	8
Where development is in a greenfield residential area.....	9
Contribution rates for different types of residential development and residential subdivision	10
Calculating the RIC in a greenfield residential area.....	11
7. Calculation of the RIC for commercial and industrial development.....	11
8. Indexation of rates – Producer Price Index (Road and Bridge Construction (NSW))	12
9. Timing for paying RIC	12
10. Condition that must be imposed on development consent.....	13
11. Infrastructure delivery agreements to support development.....	14
12. Other matters	15
Phasing in of RICs.....	15
Consequential amendments to other EPIs	15
Transport project component and strategic biodiversity component	15
Review at the end of 2 years’ time	16
Making a submission	16

1. Introduction

The NSW Government introduced the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* (the **Bill**) into Parliament on 22 June 2021. The objective of the Bill is to give effect to key recommendations of the NSW Productivity Commissioner in his Review of infrastructure Contributions in New South Wales, released in December 2020. These key recommendations included reforms relating to state infrastructure contributions, currently governed by Subdivision 4 (Special infrastructure contributions) of Division 7.1 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

Under the existing framework, state or “special” infrastructure contributions are imposed in a special contributions area by means of three instruments:

- an order of the Minister for Planning and Public Spaces to create the special contributions area (section 7.25),
- a determination by the Minister of the level and nature of the contribution (section 7.23),
- a direction of the Minister to consent authorities to impose a condition on development consents requiring the contribution to be made in accordance with the determination (section 7.24).

The Bill introduces a simpler and more straightforward mechanism for imposing state infrastructure contributions. Under the Bill, a State Environmental Planning Policy (**SEPP**) may be made to impose these contributions (called “regional infrastructure contributions” (**RIC**)) in defined regions of the state. The State Environmental Planning Policy (**SEPP**) will set out all relevant aspects of the new state infrastructure contribution, currently dealt with in three different instruments for each special contributions area.

It is proposed that a SEPP to introduce regional infrastructure contributions for 4 regions of NSW, be made to commence at the same time as the Bill. The commencement date is proposed to be 1 July 2022.

The Productivity Commissioner recommended that regional infrastructure contributions be introduced across 4 regions of NSW: Greater Sydney, Hunter, Illawarra-Shoalhaven and Central Coast, with the contributions being payable for residential, commercial and industrial development, and based on the number of dwellings or the gross floor area of the proposed development.

This Explanation of Intended Effect (**EIE**) of the proposed SEPP outlines how it will give effect to the Commissioner’s recommendations (**proposed RIC SEPP**).

The purpose of this EIE is to facilitate public consultation in relation to the proposals, as described in section 3.30 of the Act.

Terms used in the EIE are intended to have the same meanings as they have in the Standard Instrument – Principal Local Environmental Plan (**Standard Instrument LEP**) (see <https://legislation.nsw.gov.au/view/html/inforce/current/epi-2006-155a.>)

2. Overview of the proposed RIC SEPP

A new section 7.23 of the Act, to be inserted by the Bill, authorises a SEPP to be made to require a regional infrastructure contribution towards the provision of regional infrastructure. The matters relating to the RIC that must be covered by the SEPP, and matters that may be included, are described in a new section 7.25 of the Act to be inserted by the Bill. This EIE for the proposed RIC SEPP sets out how the requirements of the new section are to be met.

A RIC, like the existing special infrastructure contribution, may only be imposed through a condition of development consent, including a complying development certificate. Accordingly, no RIC will be payable for development that does not require consent.

Regional infrastructure contributions will be paid into a special statutory fund, established by the Bill (the RIC Fund). The regional infrastructure that they can fund includes state and regional roads and other transport infrastructure, hospitals, schools, parks and emergency services.

The aim of the proposed RIC SEPP will be to facilitate and support the delivery of regional infrastructure in NSW by requiring a RIC to be made in relation to development for which development consent is required in Greater Sydney, Lower Hunter, Illawarra-Shoalhaven and Central Coast.

In summary, the proposed RIC SEPP will:

- identify the 4 regions to which a RIC will apply,
- identify the types of development for which a RIC will be required, and set out the types of development that will be exempt from the requirement,
- set out how the RIC will be calculated for each type of development, including the contribution rates and the adjustment of those rates in accordance with a readily available index,
- specify the time by which the RIC must be made,
- describe the condition imposing a RIC that consent authorities and registered certifiers must impose on a development consent for carrying out development, including a complying development certificate, where the SEPP requires a RIC for development of that type,
- describe the circumstances in which the RIC can be made by providing land for infrastructure or carrying out infrastructure works, instead of by making a monetary payment.

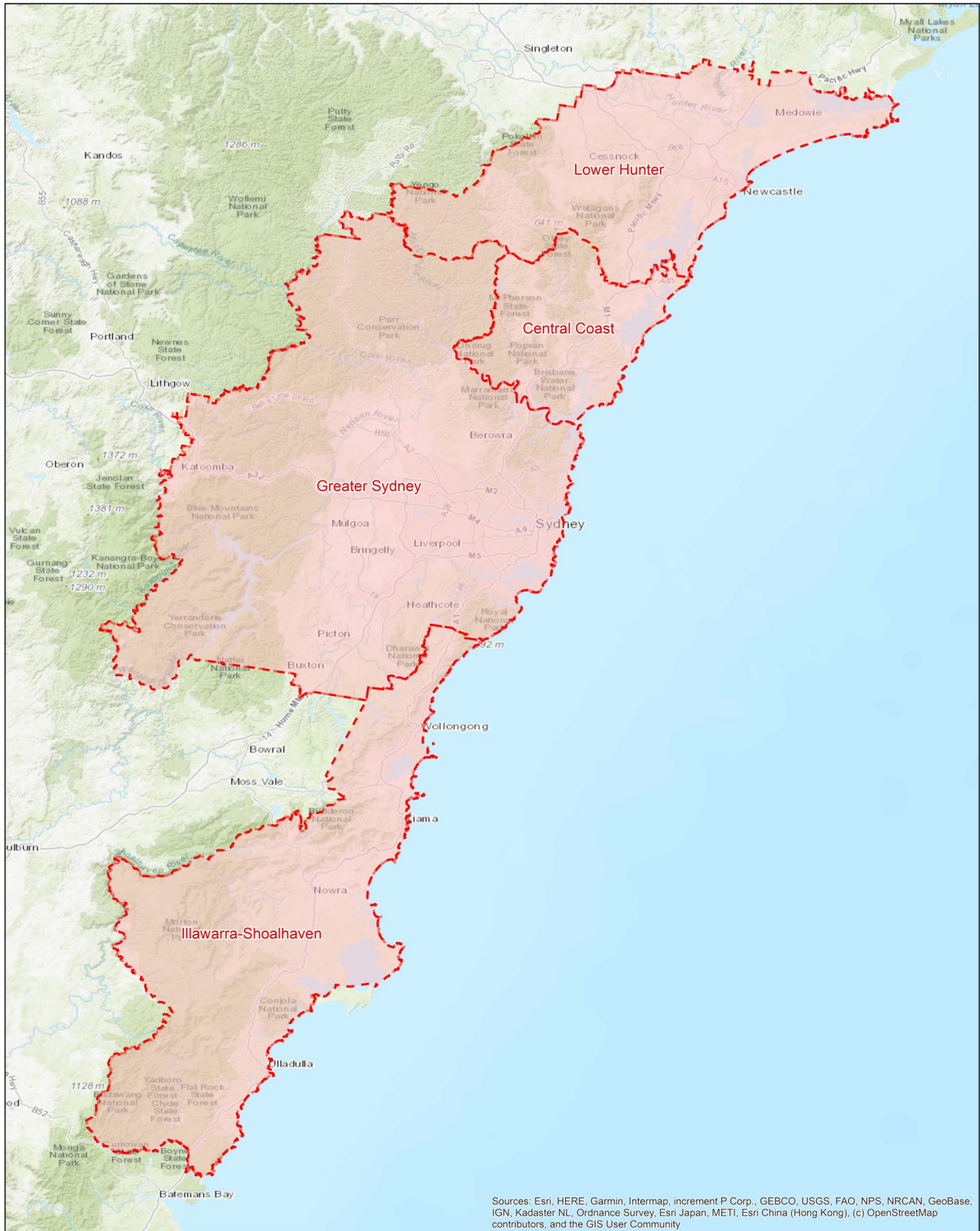
Each of these matters is dealt with in sections 3 to 12 below.

3. Where will the RIC apply?

The 4 broad regions of NSW to which the RIC will apply under the proposed RIC SEPP are as described in the following table and as illustrated in the map below (see Figure 1):


Table 1. RIC Region

Region	Local government areas included
Lower Hunter	Cessnock City, Lake Macquarie City, Maitland City, Newcastle City and Port Stephens
Central Coast	Central Coast
Greater Sydney	Bayside, City of Blacktown, City of Blue Mountains, Burwood, Camden, City of Campbelltown, Canada Bay, Canterbury-Bankstown, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunters Hill, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Wollondilly and Woollahra.
Illawarra-Shoalhaven	Kiama, Shellharbour City, Shoalhaven City and Wollongong City



Regional Boundaries

Legend

 Regional Boundaries

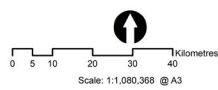


Figure 1. Map of the RIC regions

While the Productivity Commissioner proposed that the whole of the Hunter be a region for the purpose of the new regional infrastructure contribution, for the time being the proposed RIC SEPP will apply only to the Lower Hunter, where new development is expected to be concentrated.

Exclusion of development in limited areas

The RIC will not apply to development in all parts of the regions described above.

Development on land in the following areas will not attract a RIC:

- areas that are within a rural zone (as described in the *Standard Instrument LEP*),
- the existing special contributions areas for Western Sydney Growth Areas, Illawarra-Shoalhaven, and Gosford City Centre,
- the proposed special contributions area for the Western Sydney Aerotropolis,

It is intended, that the existing special infrastructure contributions framework will continue to apply to development in Western Sydney Growth Areas special contributions area, the Illawarra-Shoalhaven special contributions area and Gosford City Centre special contributions area. The way in which special infrastructure contributions are calculated in these special contributions areas is quite different to that proposed for the RIC, and so the transition to the new framework will not be straightforward, and it is proposed to maintain the existing framework in these areas until the Department has worked with stakeholders to understand the impact on existing obligations and entitlements.

The maps that identify these special contributions areas can be viewed at:

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1979-203/maps>.

Consistently with the Productivity Commissioner's recommendations, it is intended to proceed with the making of the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Aerotropolis) Determination 2020*, which was exhibited last year, following consideration of submissions from the public and finalisation of other planning instruments relating to the Aerotropolis.

It is considered that the transition from the existing special infrastructure contributions framework for the areas of Bayside West, St Leonards and Crows Nest, can be more readily made as the manner in which the SIC is calculated is similar to that proposed for the RIC. The RIC will apply to development in these areas from the commencement of the proposed RIC SEPP.

Consideration is being given to the timing for revoking the SIC frameworks in place for Warnervale Town Centre and Wyong Employment Zone. SICs made in these special contributions areas have not been at significant levels, despite the SIC frameworks being in place for over a decade, and it may be feasible for the RIC to be introduced in these areas when the RIC SEPP commences. However, biodiversity certification was conferred on Warnervale Town Centre and further work is necessary to determine an appropriate rate for a Strategic Biodiversity Component, in transitioning from a SIC based on net developable area to a SBC with a per dwelling or per square metre of GFA rate.

4. Types of development to which the RIC will apply

The proposed RIC SEPP will impose a RIC on the following broad categories of development:

- development for the purposes of residential accommodation other than boarding houses (**residential development**),
- subdivision in 'greenfield residential areas' (**residential subdivision**),

- development for the purposes of commercial premises and other types of development with a commercial purpose, including boarding houses (outlined below) (**commercial development**),
- development for the purposes of industry and similar types of development (outlined below) (**industrial development**).

It is intended that the key concepts, “residential accommodation”, “commercial premises” and “industry”, have the meanings given to them in the Standard Instrument LEP. The term “commercial premises” is a broad one, encompassing business premises, office premises and retail premises. “Industry” is similarly broad; however, it does not extend to rural industry, extractive industry, or mining.

There are other types of development that the RIC will apply to in the same way as development for the purposes of commercial premises, or development for the purposes of industry, respectively:

Table 2. Types of development the RIC will apply to

Commercial development	Industrial development
<ul style="list-style-type: none"> • entertainment facility • amusement centre • function centre • medical centre • restricted premises • sex services premises • veterinary hospital • backpackers’ accommodation • boarding houses • hotel or motel accommodation • serviced apartments • registered club • highway service centre • service station • industrial retail outlet (other than in connection with a rural industry) • wholesale supplies • exhibition home • exhibition village • recreation facility (indoor) (where in Private Recreation Zone RE2) • recreation facility (major) (where in Private Recreation Zone RE2) 	<ul style="list-style-type: none"> • warehouse or distribution centre • boat building and repair facility • vehicle body repair workshop • vehicle repair station • self-storage units • depot • freight transport facility • passenger transport facility • transport depot • industrial training facility

Exemptions from RIC – residential development

The SEPP will exempt the following sub-classes of residential development from the RIC:

- public housing within the meaning of the *Housing Act 2001*

- seniors housing (within the meaning of the Standard Instrument LEP) carried out by or on behalf of a social housing provider as defined below or other seniors housing that does not consist of a group of self-contained dwellings
- affordable housing (within the meaning of the Act) carried out by or on behalf of a social housing provider or to be managed by a registered community housing provider as required by conditions of development consent imposed in accordance with clause 17 in Division 1 (In-fill affordable housing) of Part 2 of the *State Environment Planning Policy (Affordable Rental Housing) 2009*
- group homes
- hostels
- rural workers' dwellings
- secondary dwellings

A **social housing provider**, for the purpose of describing affordable housing and seniors housing exempt from the RIC, will be any of the following:

- Services Australia,
- the Land and Housing Corporation,
- a registered community housing provider,
- a specialist supported accommodation 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,
- a not-for-profit organisation that is a direct provider of rental housing to tenants.

The only commercial or industrial development that will be exempt from the RIC will be development in Port Botany, Port Kembla and Port of Newcastle Lease Areas, reflecting existing exemptions for these areas from local infrastructure contributions.

It is proposed that a RIC will also be payable for development of the types set out above for which a complying development certificate is issued. The term “development consent” in the following sections of this EIE includes a complying development certificate.

5. How will the RIC be calculated?

Residential development and subdivision

The RIC for residential development will, generally, be based on the number of dwellings authorised by the development consent, as recommended by the Productivity Commissioner. The SEPP will set out a “per dwelling” contribution rate.

In “greenfield residential areas” it is proposed that a contribution will also be payable for residential subdivision. Under the proposed RIC SEPP, the rate for dwelling houses will also be the rate for residential subdivision in greenfield residential areas (a “per residential lot” rate). These areas will be identified by a map adopted by the SEPP. Generally, it is proposed that land in urban release areas within residential zones, including the Environmental Living Zone (Zone E4), be identified as greenfield residential areas.

Commercial or industrial development

The RIC for commercial and industrial development will be based on the gross floor area (GFA) of development to which the development consent relates. That is, the proposed RIC SEPP will set

out a “per square metre of GFA” rate, which is again consistent with the recommendations of the Productivity Commissioner.

A RIC may be payable in respect of more than one development on the same parcel of land, except in circumstances where a RIC has been paid for subdivision in a ‘greenfield residential area’ (as outlined in section 6).

Figure 2 summarises the proposed RIC rates.

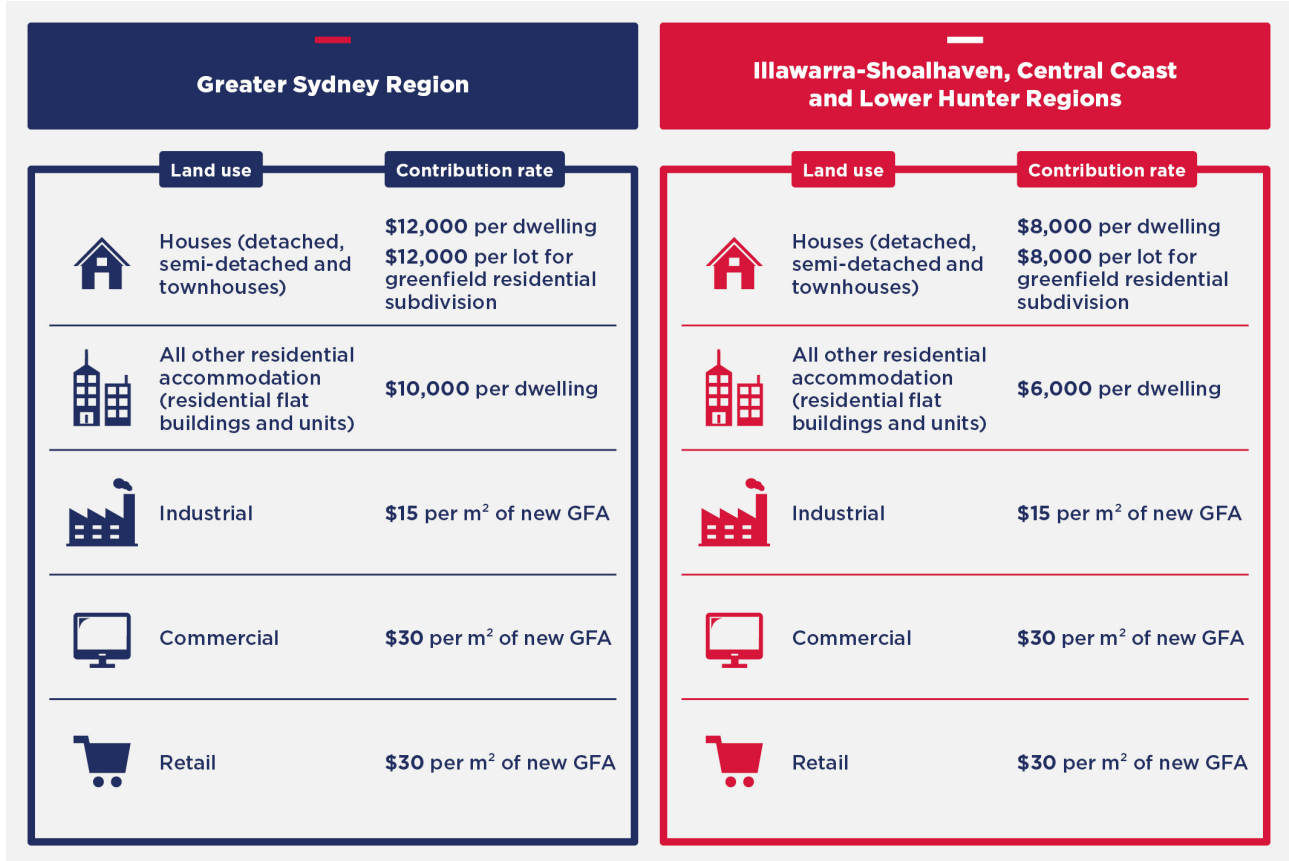


Figure 2. Proposed RIC charge rates

6. Calculation of the RIC for residential development

General

The RIC for residential development will be based on the number of dwellings involved in the development for which development consent is granted, and, in the case of residential subdivision in greenfield residential areas, on the number of lots.

For this purpose, “dwelling” will have the same meaning as it has in the Standard Instrument LEP, namely, a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

The number of dwellings, on the basis of which the RIC is to be calculated, will be the sum of the following:

- the number of new dwellings that the development consent authorises to be erected, including as a result of any extension, alteration or enlargement to an existing building, and
- the number of new dwellings that will result from a change of use of an existing building to a type of residential accommodation that the development consent authorises. (An example of a conversion that might typically occur is from serviced apartments to a residential flat building).

The number of dwellings will not include the number of existing dwellings on the land at the time the relevant consent is granted. For example, if development consent is granted for the erection of a dwelling on a lot where there is an existing dwelling house so as to create a dual occupancy, the RIC is to be calculated for one new dwelling only.

Where development is in a greenfield residential area

The calculation of the RIC for development in greenfield residential areas will be based, not just on the number of dwellings authorised by the development consent, but also on the number of residential lots in a subdivision (other than strata subdivision). Where the development consists only of subdivision and associated subdivision works, the RIC will be based wholly on the number of residential lots.

The objective is to ensure that large scale subdivision in newly or recently released urban areas will make a contribution towards regional infrastructure, and that those who build their homes on the new lots created by that subdivision will not have to pay the RIC.

The SEPP will also ensure that where a development consent allows both the subdivision of land, within a greenfield residential area, and the construction of houses on the lots that will be created from the subdivision, the RIC will not be 'charged' for both the lot and the new house to be built on that lot. That is, if a development consent authorises a subdivision of a parcel of land in Greater Sydney into 30 new lots and also authorises the construction of a house on each of those lots, the RIC that will be payable will be \$12,000 x 30, not \$12,000 x 60.

Where a RIC has been paid for a lot, the construction of a house on that lot under another, later development consent will be exempt from the RIC. However, if rather than a house, a dual occupancy, for example, was to be constructed on the lot, the RIC would be payable for one new dwelling.

The SEPP will make it clear that a RIC is not payable in respect of 'super' lots that are to be created by a proposed subdivision. Rather, the lots that will attract the RIC will be "residential lots" only, and for that purpose, it is proposed to provide that a lot can be assumed to be a residential lot if it is less than twice the minimum subdivision lot size applicable to the land under the relevant environmental planning instrument. Moreover, if it is clear to the consent authority that a lot to be created by the subdivision is to be used for a purpose other than residential accommodation (for example, a place of public worship or a school), that lot will be disregarded in the calculation of the RIC. An example would be a proposed lot where a neighbourhood shop is to be built. (And even though the proposed lot will not attract a RIC, the development consent, which allows the neighbourhood shop to be built, will have a condition requiring a RIC based on the GFA of the shop to be made.)

If a proposed lot has an existing house or other dwelling on it, and the development consent does not authorise the construction of any new dwelling on the proposed lot, that lot will not be subject to a RIC.

Contributions for subdivision may have been made, or will be made, under voluntary planning agreements applying to land in residential greenfield areas, particularly in the Lower Hunter region. It is proposed that the SEPP will place those building homes on the new lots created by the subdivision to which these VPAs apply on the same footing as other new homeowners building on lots for which a RIC has been made. That is, a RIC will not be required to be made for a single

dwelling house on a lot for which a contribution has been made under a voluntary planning agreement.

Contribution rates for different types of residential development and residential subdivision

Different contribution rates will apply to different types of residential accommodation and for residential subdivision in greenfield residential areas. The following tables set out the proposed rates for each of the 4 regions and different types of development. Where a development involves more than one type of residential accommodation, the rates below will be applied to the number of dwellings of each type, and the resulting amounts added together. The formula for calculating the RIC in a greenfield residential area is set out below the table.

Table 3. Greater Sydney region

Type of development	Rate
Lower density residential development being: <ul style="list-style-type: none"> • Dwelling houses • Attached dwellings • Semi-detached dwellings • Dual occupancies 	\$12,000 per dwelling
Higher density residential development being: <ul style="list-style-type: none"> • Multi-dwelling housing • Residential flat buildings • Group of self-contained dwellings that is seniors housing • Shop top housing • Build-to-rent housing 	\$10,000 per dwelling
Residential subdivision in greenfield residential area	\$12,000 per residential lot

Table 4. Lower Hunter, Illawarra-Shoalhaven and Central Coast regions

Type of development	Rate
Lower density residential development being: <ul style="list-style-type: none"> • Dwelling houses • Attached dwellings • Semi-detached dwellings • Dual occupancies 	\$8,000 per dwelling

Type of development	Rate
Higher density residential development being: <ul style="list-style-type: none"> • Multi-dwelling housing • Residential flat buildings • Seniors housing • Shop top housing • Build-to-rent housing 	\$6,000 per dwelling
Residential subdivision in greenfield residential area	\$8,000 per residential lot

Note that the contribution amounts in the above table may be adjusted next year when the proposed RIC SEPP is being prepared to take into account movements in the Producer Price Index (Road and Bridge Construction (NSW) (see section 8 below).

Calculating the RIC in a greenfield residential area

Applying the approach outlined above, the RIC payable for a development involving subdivision in a greenfield residential area will be calculated as follows:

$$\$C_p = (\$C_R \times L_N) + (\$LDR_R \times LDR_N) + (\$HDR_R \times HDR_N)$$

where:

\$C_p	is the monetary contribution payable
\$C_R	is the applicable contribution rate for residential subdivision
L_N	is the number of residential lots in the residential subdivision that is part of the development (on which there are no dwellings or proposed dwellings)
\$LDR_R	is the applicable contribution rate for lower density residential development
LDR_N	is the number of dwellings in lower density residential development
\$HDR_R	is the applicable contribution rate for higher density residential development
HDR_N	is the number of dwellings in higher density residential development

7. Calculation of the RIC for commercial and industrial development

A RIC for commercial or industrial development will be based on the new GFA of the buildings to which the development consent relates. The proposed SEPP will adopt the same concept of GFA as that used in the Standard Instrument LEP, as it is a concept with which both consent authorities and the development industry are familiar. The GFA, in relation to any development, will be the sum of the following:

- the GFA of any new building that the development consent authorises to be erected,
- the GFA of any enlargement or expansion of an existing building, including any internal alteration that increases the GFA of the building,
- the GFA of any existing building that is to be converted to a commercial or industrial use.

Where development does not involve the construction of new gross floor area or a change of use, such as where an existing building is being refurbished, a RIC will not be payable. Additionally, if a building is being converted from one commercial use to another commercial use, or from one industrial use to another industrial use, without any expansion of GFA, no RIC will be payable.

The proposed contribution rates will be the same for each region:

- industrial development - \$15 per square metre of GFA
- commercial development (including development for the purposes of retail development) - \$30 per square metre of GFA.

An amendment to the *Environmental Planning and Assessment Regulation 2000* will accompany the proposed RIC SEPP to require development applications for industrial or commercial development in the regions to which the RIC applies to include a statement by a suitably qualified person (such as a qualified and registered draftsman or architect) of the GFA of each new building, the GFA of any existing building that is being converted to commercial or industrial use and the GFA of any expansion of an existing building.

The RIC for a building to be used for both residential and commercial purposes will be calculated on the basis of both the number of dwellings in the building (such as shop top housing) and the GFA of the building to be used as commercial premises, such as retail.

8. Indexation of rates – Producer Price Index (Road and Bridge Construction (NSW))

The proposed RIC SEPP will provide for the rates set out for residential, commercial and industrial development to be adjusted by applying the Producer Price Index (Road and Bridge Construction (NSW)) (that is, the Producer Price Index (Catalogue no.6427.0) for 3101 Road and bridge construction New South Wales, Table 17, Series ID A2333685A, issued by the Australian Bureau of Statistics). This is consistent with the new approach to indexation of local infrastructure contributions.

The rates will be adjusted on a quarterly basis, but if the adjustment of the contribution amount would result in a rate that is less than that for the preceding quarter, the rate for that quarter will continue to apply.

The RIC amount specified in a condition of development consent will be indexed in the same way at time of payment.

9. Timing for paying RIC

The proposed RIC SEPP will provide for the payment of the RIC before the issue of the first occupation certificate for any building (or part of a building) to which the relevant development consent relates, except where the development involves residential subdivision in a greenfield residential area.

Where the development consent involves residential subdivision, the RIC must be paid before the issue of the subdivision certificate. This will be required even if the consent also authorises the construction of housing for which an occupation certificate will be needed. However, as is currently the case for special infrastructure contributions, where a development consent allows a subdivision to proceed in stages, the RIC can be paid in instalments, with each instalment being paid before the issue of a subdivision certificate for a stage. This option will be available where the development consent is for subdivision and associated subdivision work only.

The timing for the payment of the RIC mirrors arrangements proposed to be put in place, through a direction given by the Minister under section 7.17 of the Act, for the payment of local infrastructure contributions.

If a works-in-kind agreement is entered into for the RIC to be made by supplying land or carrying out infrastructure works, the agreement will deal with timing.

10. Condition that must be imposed on development consent

It is intended that the proposed RIC SEPP will require the consent authority or registered certifier to determine whether a RIC is required and, if it is required, its amount, when granting development consent or issuing a complying development certificate. An online tool is being developed to assist consent authorities and certifiers with the calculation of the RIC. It is intended to be available by 1 July 2022 when the SEPP is proposed to commence.

The condition will also need to specify:

- that the amount of the RIC set out in the condition will be indexed at the time of payment in accordance with the Producer Price Index (Road and Bridge Construction (NSW)) (**PPI**). The condition will need to set out the formula for adjusting the amount (see below),
- the timing for paying the RIC, as provided for in the RIC SEPP,
- that the payment is to be made on-line, through the NSW Planning Portal.

The RIC amount, set out in the condition, will be adjusted by multiplying it by the following fraction:

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

where:

latest PPI number is the most recent PPI number for a quarter that is available at the time of payment, and

base PPI number is the PPI number for the quarter that was applicable at the time the condition of consent was imposed.

The condition will also have to make it clear that if an adjustment in accordance with the above formula would result in a reduction of the RIC payable, the amount that has to be paid remains that specified in the condition.

The proposed RIC SEPP will set out the terms of a condition that has to be imposed on a consent for a **concept development application** (within the meaning of the Act, see section 4.22). Where a concept development application sets out only concept proposals for the development of a site, but that development is of a type for which a RIC is required, a condition in the following terms must be imposed:

The [RIC SEPP] requires regional infrastructure contributions to be made for development to which the concept proposals to which this consent relates. Accordingly, a condition of development consent to a subsequent development application in relation to the site to which this consent applies will require a regional infrastructure contribution to be made in accordance with the SEPP as in force when that later consent is granted (or any other applicable SEPP made under Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979), if the consent authorises the carrying out of development of a class for which a regional infrastructure contribution is required.

Where a concept development application also sets out detailed proposals for the first stage of development (as well as the concept proposals) to which a RIC applies, the proposed RIC SEPP will require the consent authority to calculate the RIC for the first stage and impose a condition setting out the contribution amount (and the other necessary details), as well as requiring the

consent authority to include a condition in similar terms to that above for the remaining stage or stages of the development.

11. Infrastructure delivery agreements to support development

The proposed RIC SEPP will allow a developer to make a RIC by dedicating land to a public authority for regional infrastructure or carrying out works for infrastructure, instead of paying a monetary contribution, but only if the Minister agrees to the RIC being met in this way. An agreement will then be negotiated with the developer. Decisions of the Minister will be guided by the Government's priorities for the delivery of regional infrastructure.

The proposed RIC SEPP will provide that if the agreement is for the carrying out of works, the agreement will need to:

- specify the amount of the RIC (as set out in the relevant condition or conditions of consent) that would otherwise be payable for the development,
- describe the works that are to be, or may be, carried out by the developer to contribute to the provision of a specified item or items of infrastructure in lieu of a monetary contribution,
- specify the value of the item or items of infrastructure (or how that value is to be determined) and provide for the adjustment of that value in a manner that is consistent with the adjustment of the RIC under the SEPP, and
- provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the RIC or in circumstances where the works concerned are not completed by the time at which the RIC, if made as a monetary contribution, would have been required to be made under the condition of consent and SEPP.

If the agreement is for the dedication or other provision of land, the agreement will need to:

- specify the amount of the RIC (as set out in the relevant condition or conditions of consent) that would otherwise be payable for the development,
- specify the time by which the land is to be dedicated or otherwise provided,
- specify the value of the land, or the manner in which the value of that land is to be calculated, and
- provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the RIC or in circumstances where the land concerned is not dedicated or otherwise provided by the time at which the RIC, if made as a monetary contribution, would have been required to be made under the condition of consent and SEPP.

It should be noted that a voluntary planning agreement may still be entered into for the provision of land or works under section 7.4 of the Act. The agreement can provide in effect that the RIC cannot be required for the development to which the agreement applies.

To support the proposed SEPP, the Department has prepared guidelines on Infrastructure Delivery Agreements and State Planning Agreements to provide additional information on the circumstances and terms by which an agreement as described above may be entered into.

12. Other matters

Phasing in of RICs

The proposed RIC SEPP will provide for a reduction in the amount of the RIC otherwise payable in the first 2 years after the SEPP commences on 1 July 2022, as follows:

- if the RIC is paid before 1 July 2023, the amount of the RIC is reduced by half, and
- if the RIC is paid between 1 July 2023 and 30 June 2024, the amount of the RIC is reduced by one quarter.

Consequential amendments to other EPs

The proposed RIC SEPP will make consequential amendments to a number of other environmental planning instruments.

In particular, it will amend what are called “satisfactory arrangements clauses”. These clauses prevent a consent authority from granting development consent to subdivision in urban release areas or to certain other development in existing urban areas where changes in planning controls have allowed the intensification of use, unless the Planning Secretary has certified that satisfactory arrangements have been made to contribute to the provision of state public infrastructure.

It is proposed to amend these satisfactory arrangements clauses so that they cease to operate in relation to land where that land is within a region to which a RIC applies, unless all development on the land concerned is exempt from the requirement for a RIC. In some cases, the satisfactory arrangements clause may be simply repealed, particularly if the land to which the clause applies cannot, for practical purposes, be further subdivided. This means, in effect, that across the 4 regions of NSW (Greater Sydney, Lower Hunter, Central Coast and Illawarra-Shoalhaven) satisfactory arrangements clauses will no longer operate.

Transport project component and strategic biodiversity component

The Bill provides for the RIC to include a transport project component and strategic biodiversity component.

The RIC SEPP may not provide for either component initially in any part of the 4 regions. However, if biodiversity certification is conferred on land in the Greater Sydney region following a strategic application for biodiversity certification based on the Cumberland Plain Conservation Plan (**CPCP**) before the SEPP is made, it is proposed that the SEPP will require a strategic biodiversity component in relation to residential, commercial and industrial development on the biodiversity certified land. Having regard to estimated costs of proposed conservation measures, and other measures associated with the CPCP, it is expected that the strategic biodiversity component will be calculated using the following rates:

Development type	Proposed rate
Residential development/residential subdivision	\$5,000 per dwelling/per residential lot
Commercial development	\$30 per sqm of new gross floor area
Industrial development	\$15 per sqm of new gross floor area

It is anticipated that amendments will be made to the RIC SEPP to introduce a transport project component or strategic biodiversity component soon after it is made. It is intended to publish an explanation of intended effect before either component is introduced so that there is an opportunity to take into account the valuable feedback of the community and stakeholders on the proposal.

Review at the end of 2 years' time

It is proposed to review the RIC SEPP at the end of 2 years after its commencement to assess its operation and implementation.

Making a submission

Your feedback on this EIE is welcomed from 6 October 2021 to 20 November 2021, to help us understand your views and inform the design and development of the RIC SEPP.

You can provide your feedback by making a submission to the department through the NSW Planning Portal at www.planningportal.nsw.gov.au/state-infrastructure