

# Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 94EE of the *Environmental Planning and Assessment Act 1979*, make the following Determination.



Minister for Planning

Dated: **14 JAN 2011**

## **1 Name of Determination**

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*.

## **2 Commencement**

This Determination takes effect on 24 January 2011.

## **3 Revocation of previous Determinations**

- (1) Any determination that was made before this Determination takes effect, under section 94EE of the Act, in relation to development in the special contributions area for the North West Growth Centre and South West Growth Centre is revoked.
- (2) The revocation of any such determination does not affect:
  - (a) the operation of any condition of a development consent, or approval under Part 3A of the Act, imposed in accordance with the determination, and
  - (b) anything done in accordance with the determination or any such condition, and
  - (c) the power of the Minister to impose, in accordance with the determination, a condition under section 94EF (3) that a council (or a joint regional planning panel exercising the consent authority functions of the council)

or other consent authority has failed to impose as required by a direction under section 94EF (1) of the Act.

- (3) Section 94EF of the Act, and any other provision of the Act, continue to apply with respect to a condition of a development consent (or approval under Part 3A of the Act) imposed in accordance with a determination that is revoked.

#### **4 Definitions**

- (1) In this Determination:

**Balmoral Road Area** means the area identified as Balmoral Road on the map marked “Western Sydney Growth Areas – Special Contributions Area”.

**contribution rate** – see clauses 8 and 9.

**deferred payment arrangement** – see clause 18.

**developer** means the person having the benefit of a development consent for the time being.

**Elderslie Area** means the area identified as Elderslie on the map marked “Western Sydney Growth Areas – Special Contributions Area”.

**Growth Centres SEPP** means *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

**industrial land** means:

- (a) land within any of the following land use zones specified in the Standard Instrument:
- (i) Zone B5 Business Development,
  - (ii) Zone B7 Business Park,
  - (iii) Zone IN1 General Industrial,
  - (iv) Zone IN2 Light Industrial,
  - (v) Zone IN3 Heavy Industrial, and
- (b) land within a land use zone that is equivalent to any such land use zone, and
- (c) land within any land use zone:
- (i) that adjoins industrial land described in paragraph (a) or (b), and
  - (ii) on which development for a purpose permitted on the adjoining industrial land is authorised to be carried out under a development consent that is granted pursuant to a provision of an environmental

planning instrument that is in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument.

Note. See, for example, clause 5.3 (Development near zone boundaries) in the Precinct Plans set out in the Appendices to the *Growth Centres SEPP*.

**infrastructure** has the same meaning as it has in Subdivision 4 of Division 6 of Part 4 of the Act.

**relevant development** means development for which a special infrastructure contribution must be made under this Determination.

**residential land** means:

- (a) land within any of the following land use zones specified in the Standard Instrument:
  - (i) Zone R1 General Residential,
  - (ii) Zone R2 Low Density Residential,
  - (iii) Zone R3 Medium Density Residential,
  - (iv) Zone R4 High Density Residential,
  - (v) Zone R5 Large Lot Residential,
  - (vi) Zone RE2 Private Recreation,
  - (vii) Zone E4 Environmental Living, and
- (b) land within a land use zone that is equivalent to any such land use zone, and

Note. Examples of land use zones equivalent to those specified in the Standard Instrument are Zone 2 (c) Higher Density Residential and Zone 6 (c) Private Open Space, as provided by *Campbelltown (Urban Area) Local Environmental Plan 2002*. Certain land within Edmondson Park precinct is zoned under that instrument.

- (c) land within any land use zone:
  - (i) that adjoins residential land described in paragraph (a) or (b), and
  - (ii) on which development for a purpose permitted on the adjoining residential land is authorised to be carried out under a development consent that is granted pursuant to a provision of an environmental planning instrument that is in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument.

**special infrastructure contribution** means a development contribution that is determined under section 94EE of the Act.

**special infrastructure contribution works-in-kind agreement** - see clause 26.

**Spring Farm Area** means the area identified as Spring Farm on the map marked “Western Sydney Growth Areas – Special Contributions Area”.

**Standard Instrument** means the standard instrument for a principal local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

**strata certificate** means a strata certificate within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**strata lot** means a lot within the meaning of section 5 (1) of the *Strata Schemes (Freehold Development) Act 1973* or section 4 (1) of the *Strata Schemes (Leasehold Development) Act 1986*.

**Sydney CPI number** means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

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

**the map marked “Western Sydney Growth Areas – Special Contributions Area”** means the map marked “Western Sydney Growth Areas – Special Contributions Area” referred to in Schedule 5A to the Act.

**Western Sydney Growth Areas Special Contributions Area** means the land described in Schedule 5A to the Act as the land shown edged heavy black on the map marked “Western Sydney Growth Areas – Special Contributions Area”.

**Western Sydney growth centre** means a growth centre within the meaning of the *Growth Centres SEPP* (being the North West Growth Centre and the South West Growth Centre).

**Western Sydney growth centre precinct not subject to a precinct plan** means a precinct in a Western Sydney growth centre other than a Western Sydney growth centre precinct subject to a precinct plan.

**Western Sydney growth centre precinct subject to a precinct plan** means either of the following precincts:

- (a) a precinct to which a precinct plan set out in an appendix to the *Growth Centres SEPP* applies,
- (b) a precinct referred to in clause 7A of the *Growth Centres SEPP*.

- (2) A word or expression used in this Determination has the same meaning as it has in the Act, unless otherwise defined.

Note. See section 4B of the *Environmental Planning and Assessment Act 1979* for the meaning of **subdivision of land**. Subdivision of land includes community title subdivision under the *Community Land Development Act 1989*.

- (3) The following words or expressions have the same meanings as they have in the Standard Instrument:
- (a) dual occupancy,
  - (b) dwelling house,
  - (c) emergency services facility,
  - (d) health services facility,
  - (e) neighbourhood shop,
  - (f) passenger transport facility,
  - (g) public utility undertaking,
  - (h) recreation area,
  - (i) shop top housing.
- (4) A reference in this Determination to the Minister in relation to a deferred payment arrangement or special infrastructure contribution works-in-kind agreement includes a reference to the Director-General, or other officer of the Department of Planning, acting for and on behalf of the Crown in right of the State of New South Wales.
- (5) Notes in this Determination are provided for guidance only.

## **5 Development for which SIC must be made**

- (1) Subject to this clause, a special infrastructure contribution must be made for development on the following land within the Western Sydney Growth Areas Special Contributions Area:
- (a) residential land within a Western Sydney growth centre precinct subject to a precinct plan,
  - (b) residential land within Balmoral Road Area, Elderslie Area or Spring Farm Area,
  - (c) industrial land within a Western Sydney growth centre precinct subject to a precinct plan,
  - (d) any land within a Western Sydney growth centre precinct not subject to a precinct plan.

Note. A special infrastructure contribution may be imposed only as a condition of development consent. Accordingly, such a contribution can be required only in respect of development that may be carried out with development consent. A special infrastructure contribution cannot be imposed as a condition of consent if a planning agreement made in accordance with section 93F of the *Environmental Planning and Assessment Act 1979* excludes the application of section 94EF.

- (2) A special infrastructure contribution is not required to be made for development for the purpose of any of the following:

- (a) government school (within the meaning of the *Education Act 1990*),
- (b) TAFE establishment,
- (c) emergency services facility,
- (d) health services facility owned or operated by a public authority,
- (e) golf course (but not including any associated building such as a club house),
- (f) neighbourhood shop,
- (g) passenger transport facility,
- (h) public utility undertaking,
- (i) bus depot, whether or not owned or operated by a public authority,
- (j) recreation area,
- (k) shop top housing,
- (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
- (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination or an earlier determination of the Minister under section 94EE of the Act.

Note. See Appendix 1 to this Determination for the items of infrastructure in connection with which a special infrastructure contribution is required to be made under this Determination.

- (3) If a special infrastructure contribution has been required to be made for development on land (whether in accordance with this Determination or an earlier determination under section 94EE), a further special infrastructure contribution is not required to be made for other development on that land.
- (4) A special infrastructure contribution is not required to be made for development on land within a Western Sydney growth centre (other than land within Colebee precinct or Edmonson Park precinct) that was zoned for residential, business, commercial or industrial purposes immediately before 28 July 2006 (being the date on which the *Growth Centres SEPP* commenced).
- (5) A special infrastructure contribution is not required to be made for any of the following kinds of development:
  - (a) subdivision for the purpose only of creating a lot (no more than 0.1 hectare in area) to contain an existing lawful habitable dwelling,
  - (b) subdivision for the purpose only of rectifying an encroachment on any existing lot,
  - (c) development on land in relation to which the Director-General has certified to the consent authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services (“interim transport levy”).

- (6) A special infrastructure contribution is not required to be made for development that satisfies both of the following:
- (a) the development comprises the subdivision of land (other than a strata subdivision or a subdivision that is only for the purpose of creating a lot to contain an existing habitable dwelling),
  - (b) the Director-General has, having regard to relevant planning controls, certified to the consent authority that each lot resulting from the subdivision is a lot that will be further subdivided in accordance with a further development consent (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

Note. A lot referred to in paragraph (b) is commonly referred to as a super lot.

- (7) A special infrastructure contribution is not required to be made for any of the following kinds of development on land within a Western Sydney growth centre precinct not subject to a precinct plan:
- (a) development for the purpose of a single dwelling house or dual occupancy,
  - (b) development that is ancillary to an existing development for a lawful purpose (that is, development that is subordinate or subservient to that existing development and would not, but for the existing development, be carried out),
  - (c) development that the Director-General has, having regard to the following matters, certified to the consent authority to be development that is not for an urban purpose and will not adversely affect the potential of the land concerned (or surrounding land) to be developed (in an orderly manner) for urban purposes in the future:
    - (i) whether the proposed development is of a kind that is unlikely to be carried out in an urban area,
    - (ii) whether the period during which the development is to be carried out is limited,
    - (iii) whether the development has a limited capital investment value,
    - (iv) whether the development will compromise the future urban development of the land (or surrounding land) for the uses generally identified in the relevant growth centre structure plan (within the meaning of the *Growth Centres SEPP*),
    - (v) any other consideration the Director-General considers relevant.
- (8) A special infrastructure contribution is not required to be made in respect of complying development for which a complying development certificate is issued.
- (9) To avoid doubt, a special infrastructure contribution is required to be made:

- (a) for any part of the land to which a development consent relates within the Western Sydney Growth Areas Special Contributions Area, even if the same development consent authorises development on land outside the Special Contributions Area, and
  - (b) for any part of the land on which relevant development is authorised to be carried out by a development consent, even if the same development consent also authorises development that is not relevant development (because, for example, of land use zoning) on another part of the land.
- (10) An exclusion from the requirement to make a special infrastructure contribution provided by a subclause of this clause is not limited by the terms of an exclusion provided by any other subclause of this clause.

Note. See section 75R (4) of the *Environmental Planning and Assessment Act 1979* for the application of this Determination to a project under Part 3A of that Act.

## 6 Nature of contribution

- (1) The special infrastructure contribution that must be made for relevant development is:
- (a) a monetary contribution, or
  - (b) a contribution of a kind specified in a special infrastructure contribution works-in-kind agreement that is in force in relation to the relevant development (being the carrying out of works for the provision of infrastructure or the dedication or other provision of land).
- (2) The special infrastructure contribution may comprise part of the amount of the monetary contribution otherwise payable and the balance as a contribution provided by a special infrastructure contribution works-in-kind agreement.

## 7 Amount of monetary contribution

The monetary contribution that is payable as a special infrastructure contribution for a relevant development is the amount calculated by applying the contribution rate for the relevant development, as at the date of payment, to the net developable area for the development, that is, the monetary contribution is an amount calculated as follows:

$$SC_p = NDA \times SC_R$$

where:

- $SC_p$  is the monetary contribution payable
- $NDA$  is the net developable area, in hectares, for the relevant development (determined in accordance with clauses 10 to 14)



$\$C_R$  is the amount in dollars of the contribution rate, applicable at the date of payment, for the relevant development (as provided by clauses 8 and 9).

**8 Contribution rates**

- (1) The contribution rate that is to be used in the calculation of the monetary contribution for a relevant development is the rate specified in the table to subclause (2) for development of the class to which the relevant development belongs.
- (2) Each amount specified in the table to this subclause applies to the determination of the relevant contribution rate at any time before 1 July 2011.

**Table**

Class of development	Contribution rate
1. Development on <b>residential land</b> that is within a Western Sydney growth centre precinct subject to a precinct plan (as referred to in clause 5 (1) (a))	\$269, 649 per hectare of net developable area
2. Development on <b>residential land</b> within Balmoral Road Area, Elderslie Area or Spring Farm Area (as referred to in clause 5 (1) (b))	\$213, 989 per hectare of net developable area
3. Development on <b>industrial land</b> that is within a Western Sydney growth centre precinct subject to a precinct plan (as referred to in clause 5 (1) (c))	\$116, 899 per hectare of net developable area
4. Development on <b>any land</b> that is within a Western Sydney growth centre precinct <b>not</b> subject to a precinct plan (as referred to in clause 5 (1) (d))	\$269, 649 per hectare of net developable area

- (3) The amounts that apply to the determination of the contribution rates at any time during the 12 month period commencing 1 July 2011, and during each subsequent 12 month period, are the amounts as adjusted in accordance with clause 9.

**9 Annual adjustment of amounts used in contribution rates**

- (1) For the purposes of this clause, each of the amounts of \$269, 649, \$213, 989 and \$116, 899 specified in the table to clause 8 (2) is an adjustable amount.
- (2) On 1 July 2011 and on 1 July in each subsequent year, each adjustable amount is to be adjusted by multiplying the amount by the following fraction:

### **latest Sydney CPI number / 170.5**

where:

*latest Sydney CPI number* is the Sydney CPI number for the March quarter in the year in which the adjustment is made (the March quarter being the quarter commencing on and including 1 January and ending on and including 31 March in that same year).

Note. The figure 170.5 is the Sydney CPI number for the March quarter in 2010.

- (3) If an adjustable amount, as adjusted in accordance with subclause (2), is not a multiple of \$1, the amount is to be rounded to the nearest \$1.

### **10 Net developable area**

- (1) The net developable area for a relevant development is the area of land, in hectares, to which the development consent for the development relates, subject to this Determination.
- (2) The net developable area for a relevant development includes the area of any land that the development consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road (other than a road referred to in subclause (3)). The net developable area does not, however, include the area of any existing road in respect of which the development consent authorises, or requires, road work (such as road widening) to be carried out.
- (3) To avoid doubt, the net developable area does not include the area of any land that the development consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
  - (a) government school (within the meaning of the *Education Act 1990*),
  - (b) TAFE establishment,
  - (c) emergency services facility,
  - (d) health services facility owned or operated by a public authority,
  - (e) golf course,
  - (f) passenger transport facility,
  - (g) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
  - (h) public transport corridor (other than a road corridor),
  - (i) public utility undertaking,
  - (j) bus depot, whether or not owned or operated by a public authority,
  - (k) recreation area,
  - (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or

- section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
- (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination or an earlier determination of the Minister under section 94EE of the Act.

- (4) The following areas of land are also not to be included in the calculation of the net developable area for the relevant development:
  - (a) any part of the land to which the development consent for the relevant development relates that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if that part of the land is unsuitable for the relevant development by virtue of it being at or below that level,
  - (b) any part of the land to which the development consent for the relevant development relates that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act.

**11 Net developable area where large lot created to contain an existing habitable dwelling**

The net developable area for a relevant development comprising subdivision of land for the purpose only of creating a lot of more than 0.1 hectare in area to contain an existing lawful habitable dwelling is taken to be reduced by 0.1 hectare.

Note. See also clause 5 (5) (a) which provides that a SIC is not required to be made for a subdivision of land the only purpose of which is to create a lot that is no more than 0.1 hectare in area so as to contain an existing habitable dwelling.

**12 Net developable area not to include any residue lot or super lot**

The net developable area for a relevant development comprising subdivision of land does not include any lot that the Director-General has, having regard to relevant planning controls, certified to the consent authority is a lot that will be further subdivided in accordance with a further development consent (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

**13 Reduction of net developable area where land within heritage curtilage or Environmental Living Zone**

- (1) This clause applies to a relevant development if any lot of land to which the development consent for the development relates includes (wholly or partly):
  - (a) land that is within the curtilage of a building listed on the State Heritage Register, or
  - (b) land that is within Zone E4 Environmental Living.

- (2) For the purpose of calculating the net developable area for a relevant development to which this clause applies, any such lot that is more than 0.1 hectare in area is taken to be 0.1 hectare.
- (3) In this clause, *curtilage*, in relation to a building, means the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register.

#### **14 Final determination of net developable area by Director-General**

The Director-General may make any determination required to be made for the purpose of calculating the net developable area for a relevant development in accordance with this Determination and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.

#### **15 When a monetary contribution for development other than subdivision is to be paid**

If a special infrastructure contribution is made as a monetary contribution, the monetary contribution must be paid for relevant development (other than subdivision):

- (a) before a construction certificate is issued in relation to a building to which the development consent for the relevant development relates, and
- (b) if a construction certificate is not required for the relevant development, before any work that the development consent authorises to be carried out is physically commenced on the land.

#### **16 When a monetary contribution for subdivision (other than strata subdivision) is to be paid**

- (1) If a special infrastructure contribution for a subdivision (other than strata subdivision) is made as a monetary contribution, the monetary contribution must be paid:
  - (a) before a subdivision certificate is issued for the subdivision, or
  - (b) in accordance with clause 19 if a deferred payment arrangement is in force in relation to the monetary contribution at the time the subdivision certificate is issued for the subdivision.
- (2) For the purpose of subclause (1) (a), if a subdivision certificate is sought for a plan of subdivision that would, on registration, create only some of the lots authorised to be created by the relevant development consent, the monetary contribution for the subdivision authorised by the development consent may be paid progressively, with an amount being paid before the issue of each subdivision certificate for a plan of subdivision authorised by that consent (a *subdivision certificate for a staged subdivision*).

- (3) The amount that must be paid before the issue of each subdivision certificate for a staged subdivision is to be calculated:
- (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the development consent, and
  - (b) on the basis that the net developable area does not include the area of any “transitional lot” in the plan of subdivision for which the subdivision certificate is sought.

A “*transitional lot*” is a lot in the plan of subdivision for which the subdivision certificate is sought that may be further subdivided in accordance with the relevant development consent.

#### **17 When a monetary contribution for strata subdivision is to be paid**

If a special infrastructure contribution for a strata subdivision is made as a monetary contribution, the monetary contribution must be paid:

- (a) before a strata certificate for the strata subdivision is issued, or
- (b) in accordance with clause 19 if a deferred payment arrangement is in force in relation to the monetary contribution at the time the strata certificate is issued.

#### **18 Deferred payment arrangement for subdivision**

- (1) For the purposes of this Determination, a deferred payment arrangement in relation to the payment of a monetary contribution for a subdivision is an arrangement described in this clause.
- (2) A deferred payment arrangement is made, in relation to a subdivision, if a deed of charge is executed by the owner of the land and the Minister, and that deed:
  - (a) grants the Minister a charge over the land to which the development consent for the subdivision relates, and
  - (b) is generally in accordance with the Memorandum of Deed of Charge Standard Terms and Conditions, executed by the Minister and registered by the Registrar-General, and
  - (c) is registered on the title to the land.

Note. A caveat may be lodged by or on behalf of the Minister to protect the interest created by the Deed of Charge over the land concerned.

- (3) A deferred payment arrangement is also made, in relation to a subdivision, if a bank guarantee is provided to the Minister and:
  - (a) the Minister has agreed in writing to the terms of the bank guarantee, and

- (b) the bank guarantee:
  - (i) secures the payment of the monetary contribution (including the payment of any contribution amount referred to in clause 20, 21 or 22), and
  - (ii) is for 100% of the monetary contribution (or any contribution amount referred to in clause 20, 21 or 22) at the time it becomes due, and
  - (iii) the bank guarantee provides that the Minister may call upon the bank guarantee (in full or in part) in the event of a failure to pay the monetary contribution, or any contribution amount, at the time it becomes due.

**19 When a monetary contribution must be paid if deferred payment arrangement in place**

If a deferred payment arrangement in relation to a monetary contribution for subdivision is in force, a separate amount is payable in respect of each lot or strata lot in the subdivision (the *contribution amount* calculated in accordance with clause 20, 21 or 22) and must be paid:

- (a) before the end of 3 years from the date of issue of the subdivision certificate or strata certificate that relates to that lot or strata lot, or
- (b) at least 21 working days before the lot or strata lot is first transferred (following its creation),

whichever is the earlier.

**20 Amount payable in respect of each lot in subdivision – deferred payment arrangement**

- (1) The contribution amount that is payable in respect of a lot in a subdivision (other than a subdivision to which clause 21 or 22 applies) for which a subdivision certificate has been issued is to be calculated, as at the date of payment, in accordance with the following formula:

$$SCA_P = L/LT \times NDA \times SC_R$$

where:

- $SCA_P$  is the contribution amount payable for the lot
- $L$  is the area (in hectares) of the lot
- $LT$  is the total area (in hectares) of the lots to which the subdivision certificate relates
- $NDA$  is the net developable area for the subdivision
- $SC_R$  is the amount in dollars of the contribution rate, applicable at the date of payment, for the subdivision (as provided by clauses 8 and 9)