



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.

Minister for Planning and Public Spaces

---

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

under the

Environmental Planning and Assessment Act 1979

## Contents

	Page
<b>Part 1 Preliminary</b>	
1 Name of Order	4
2 Commencement	4
3 Interpretation	4
4 Regions to which Order applies	4
<b>Part 2 Development for which contribution is required and determination of contribution</b>	
<b>Division 1 Classes of development for which contribution is required</b>	
5 Development for which a contribution is required	5
6 Development for which complying development certificate is issued	5
<b>Division 2 Housing and productivity contribution components</b>	
7 Base component	5
8 Other components	6
9 Indexation of amounts	6
<b>Division 3 Determination and calculation of contributions</b>	
10 Determination of housing and productivity contribution	7
11 Calculation of amount of contribution for each HPC class of development	7
12 Calculation of HPC units for residential subdivision	7
13 Calculation of HPC units for residential strata subdivision	8
14 Calculation of HPC units for non-strata multi-dwelling development	8
15 Calculation of HPC units for manufactured home estate	9

	Page
16 Calculation of HPC units for commercial development	9
17 Calculation of HPC units for industrial development	9
18 Calculation of contribution if development in more than one region etc	10
<b>Part 3 Nature of contributions and time by which contributions to be made</b>	
19 Nature of contributions and time to be made	12
20 Time by which a housing and productivity contribution must be made	12
21 Timing if residential subdivision is staged	12
22 Discount in first 21 months	13
<b>Part 4 Conditions of development consent</b>	
23 Terms of conditions for contribution	14
24 Special provision for concept DAs	15
25 Application to pending DAs	16
26 Repeal of former 7.23 determinations and 7.24 directions	16
<b>Schedule 1 Definitions and interpretation</b>	17
<b>Schedule 2 Exemptions from housing and productivity contribution</b>	20
<b>Schedule 3 Strategic biodiversity components</b>	21
<b>Schedule 4 Transport project components</b>	22
<b>Schedule 5 Savings and transitional matters relating to former SIC determinations</b>	23

## 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 Standard Instrument and the Act, 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.

### 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.

**Note.** A regulation under clause 1(4)(b) of Schedule 4 to the Act will exclude land in the Western Sydney Growth Areas and Western Sydney Aerotropolis special contributions area from the housing and productivity contribution provisions of the Act 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 on land for which development consent is granted if it involves development of any of the following classes (a **HPC class of development**)—
  - (a) residential development,
  - (b) commercial development,
  - (c) industrial development.
- (2) For the purposes of this Order, any development in a HPC class of development is **HPC development**.
- (3) In this Order, **residential development** means—
  - (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) residential strata subdivision,
  - (c) development for the purposes of build-to-rent housing or seniors living consisting of a group of independent living units (**non-strata multi-dwelling development**),
  - (d) development for the purposes of a manufactured home estate.
- (4) For the purposes of clause 3(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.
- (5) 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.

#### 6 Development for which complying development certificate is issued

A housing and productivity contribution is required when a complying development certificate is issued for development if it would be required when development consent is granted for the development.

### Division 2 Housing and productivity contribution amounts

#### 7 Base component

- (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
	Non-strata multi-dwelling development	\$10,000	new non-strata dwelling
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA
Central Coast Illawarra-Shoalhaven	Residential subdivision	\$8,000	new dwelling lot
	Residential strata subdivision	\$6,000	new strata dwelling lot
	Non-strata multi-dwelling development	\$6,000	new non-strata dwelling
Lower Hunter	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 to be adjusted by multiplying it by the following fraction—

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

where—

**latest PPI number** is the PPI number for the 2<sup>nd</sup> last quarter before the quarter in which the adjustment is made, and

**base PPI number** is the PPI number for the June quarter 2023 (Q2).

**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, SBC or TPC 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 rate 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 rate 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 total housing and productivity contribution for any HPC development is the amount calculated in accordance with this Division for each HPC class of development involved in the HPC development.
- (2) If a calculation of a monetary amount or other number results in a negative value, the amount or number is taken to be zero.
- (3) The total amount of the housing and productivity contribution is subject to adjustment at time of payment as required by clause 23.

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

The housing and productivity contribution that is payable for each HPC class of development is the sum of—

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

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

- (1) The number of new dwelling lots that will result from residential subdivision is the number of lots authorised by the development consent for the subdivision, 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 or can be used for a purpose other than residential accommodation, and
    - (ii) the development consent does not authorise the demolition of the existing building, 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 in a building that will result from residential strata subdivision is the number of lots authorised by the development consent for the subdivision that will contain a dwelling, less the number of any existing lots when the development application is 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 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 non-strata multi-dwelling development**

- (1) The number of new non-strata dwellings that will result from non-strata multi-dwelling development is the number of dwellings that are authorised by the development consent for the development, less the number of dwellings on the land when the development application is made.
- (2) A housing and productivity contribution for any strata subdivision of non-strata multi-dwelling development is not required.

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

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



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

- (1) The new gross floor area of the commercial development is the sum of the gross floor areas of the commercial buildings to which the development consent relates.
- (2) The new gross floor area of a commercial building to which the development consent relates is, in the case of—
  - (a) the erection of a new building – the gross floor area of the building, and
  - (b) 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) 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.

### **Common areas in mixed use buildings**

- (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) Except as provided by subclause (3), 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 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) The new gross floor area of an industrial building to which the development consent relates is, in the case of—
  - (a) the erection of a new building — the gross floor area of the building, and
  - (b) 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) 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.

## **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 partly on land on which a SBC or TPC is required,
- (c) HPC development that is partly on land within a region and partly on land outside a region,
- (d) HPC development that is partly on land with a Lease Area and partly on land outside it.

**Development in more than one region**

- (2) If the HPC development is in more than one region, the housing and productivity contribution is to be determined separately for each part of the development in a different region. The total amount payable is the sum of those separately determined amounts.

**Development only partly on land on which a SPC or TPC is required**

- (3) If the HPC development is only partly on land on which a SBC or TPC is required, the housing and productivity contribution is to be separately determined for that part of the development respectively, and for that part of the development outside such land. The total amount payable is the sum of those separately determined amounts
- (4) However, if a building or proposed building, or an existing lot or 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 on which a SBC is required and other land in the region – it is to be treated as wholly on land on which a SBC is required and accordingly the higher SBC applies in relation to it, and
  - (c) land on which a TPC is required and other land in the region – it is to be treated as wholly on land on which a TPC is required and accordingly the higher TPC applies in relation to it (to the extent that it is residential development or commercial development).

**Development partly outside a region or Lease Area**

- (5) If a development consent permits HPC development on land that is partly in a region and partly outside any region, or 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.
- (6) For the purpose of calculating the housing and productivity contribution for HPC development referred to in subclause (5) that—
  - (a) involves subdivision of land—
    - (i) the number of existing potential dwelling lots includes any such lot that is only partly within a region or Lease Area, and
    - (ii) any proposed lot that will result from the subdivision and that lies partly within and partly outside the region is to be treated as lying wholly outside the region or the Lease Area.

- (b) involves the erection of a building or is residential strata subdivision (or both) that is only partly outside a region or Lease Area—the building is to be treated as lying wholly outside the region or Lease Area.

DRAFT

## 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 (other than a contribution imposed as a condition of a complying development certificate or any TPC of the contribution) may, with the agreement of the Minister, be made in 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 how it is to be determined.

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

- (1) 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.
- (2) If a HPC development consists only of residential strata subdivision, the housing and productivity contribution must be paid before the issue of the first strata certificate relating to the residential strata subdivision.
- (3) A housing and productivity contribution required by a development consent for 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.
- (4) In any other case, the housing and productivity contribution 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).

### 21 Timing if residential subdivision is staged

- (1) This clause applies to the payment of a HPC development that consists only of residential subdivision (other than where 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. 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**).
- (3) 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.

## **22 Discount in first 21 months**

- (1) If a housing and productivity contribution is paid—
  - (a) at any time before 1 July 2024—the amount otherwise payable (apart from any TPC amount) is reduced by 50%, and
  - (b) at any time between 1 July 2024 and 30 June 2025—the amount otherwise payable (apart from any TPC amount) is reduced by 25%.
- (2) If a TPC of a housing and productivity contribution is paid at any time before 1 July 2024, the amount is reduced by 25%.
- (3) The discount does not apply to a housing and productivity contribution that is not a monetary contribution.

## Part 4 Conditions of development consent

### 23 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 a HPC development, but the requirement to make the contribution must be expressed as being subject to any exclusion of the application of subdivision 4 of division 7.1 of the Act to the development by a planning agreement.

**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 time development consent is granted, rounded up to the nearest whole cent,
  - (b) the amount of the contribution, if any, rounded up to the nearest whole cent,
  - (c) the amount of any strategic biodiversity component or transport project component of the contribution, rounded to the nearest cent,
  - (d) the time by which the housing and productivity contribution must be made,
  - (e) 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,
  - (f) the payment must be made using the NSW planning portal,
  - (g) if the development is a residential subdivision to which clause 21 applies – the payment of the housing and productivity contribution may be made in instalments as provided in that clause,
  - (h) 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 TPC amount),
  - (i) if the development consent is granted before 1 July 2025 – the amount of the housing and productivity contribution (apart from any TPC amount), if paid before 1 July 2024 or 1 July 2025, is reduced by 50% and 25%, respectively, if the contribution is made only as monetary contribution,
  - (j) if the development consent is granted before 1 July 2024 for residential development or commercial development and a TPC is required by Schedule 1, Division 1 – the amount of the transport project component is reduced by 25%, if paid before 1 July 2024.
- (3) For the purpose of complying with subclause (2)(e), the conditions of consent must specify that the contribution amount set out in the consent 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 and up to and including the 2<sup>nd</sup> last quarter before the quarter in which the payment is made, and

**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 the amount set out in the consent in accordance with the above results in a lesser amount, the amount set out in the consent must be paid instead.

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

## 24 Special provision for concept DAs

- (1) This clause applies to concept development applications within the meaning of section 4.22 of the Act.
- (2) Development consent to a concept development application for development in a region (the **initial development consent**) is to be granted subject to a condition that any development consent granted for a subsequent stage of development on the site to which the initial development consent relates (a **subsequent development consent**) is to be subject to a condition—
  - (a) requiring a housing and productivity contribution to be made if a contribution is otherwise required for that stage of development under a Ministerial planning order in force under subdivision 4 of division 7.1 of the Act (the **applicable order**) at the time the subsequent development consent is granted, and
  - (b) requiring any such contribution to be calculated in accordance with the applicable order as in force when the subsequent development consent is granted.
- (3) An initial development consent that includes consent to detailed proposals for the first stage of development that is HPC development must also include the conditions required by clause 23 for that first stage.
- (4) If an initial development consent has been granted before the commencement of this Order, a subsequent development consent for a stage that is HPC development must include the conditions required by clause 23.
- (5) The requirement in subclause (4) 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 direction under former section 7.24 of the Act (within the meaning of Schedule 4 to the Act). Accordingly, special infrastructure contributions are not required for a subsequent stage.

**25 Application to pending DAs**

- (1) This Order does not apply in relation to the grant of development consent to a development application that was lodged before the commencement of this Order, even if development consent is granted after the commencement.
- (2) However, if the application is withdrawn or rejected, or development consent refused, a housing and productivity contribution may be required for the same or substantially the same development that is the subject of a new application in accordance with this Order.

**26 Repeal of former 7.23 determinations and 7.24 directions**

Schedule 5 repeals certain former 7.23 determinations and 7.24 directions and contains other provisions of a savings and transitional nature.



## Schedule 1 Definitions and interpretation

### 1 Definitions

In this Order—

**build-to-rent housing** means development to which Part 4 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 and 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 words.

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

**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.

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

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

**Pymont Peninsula (Sydney Metro) area**—see Schedule 4.

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

**residential strata subdivision** means strata subdivision to create strata lots for dwellings.

**residential subdivision**—see clause 5 (3) (a).

**SBC** means a strategic biodiversity component of a housing and productivity contribution.

**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 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** means a transport project component of a housing and productivity contribution.

**TPC amount**—see Schedule 4.

**Transport Project Component – Pyrmont Peninsula (Sydney Metro) Map**—see Schedule 4.

## **2 Gross floor area**

In this Order, **GFA** and **gross floor area** mean gross floor area within the meaning of the Standard Instrument. A reference to the GFA or gross floor area of part of a building is to be construed accordingly.

## **3 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.

## **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—
- (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 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 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*

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

## Schedule 3 Strategic biodiversity components

### Division 1 Cumberland Plain Conservation Plan

- (1) A SBC for a housing and productivity contribution is required for HPC development on CPCP biodiversity certified land, but only if the land is CPCP biodiversity certified land when development consent for the HPC development is granted.
- (2) The SBC 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	\$10,000	new dwelling lot
Residential strata subdivision	\$10,000	new strata dwelling lot
Non-strata multi-dwelling development	\$10,000	new non-strata dwelling
Commercial development	\$60	square metre of new GFA
Industrial development	\$30	square metre of new GFA

- (3) 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.
- (4) The SBC amounts for CPCP biodiversity certified land 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.
- (5) In this Order, **CPCP biodiversity certified land** means land that has been biodiversity certified under the order made by the Minister for Environment and Heritage under section 8.2 of the *Biodiversity Conservation Act 2016* relating to the Cumberland Plain Conservation Plan and published in the NSW Government Gazette on 17 August 2022 (entitled "Order conferring strategic biodiversity certification – Cumberland Plain Conservation Plan"), as amended from time to time.

**Note.** When the Minister for Environment and Heritage made the order referred to above, CPCP biodiversity certified land was the land depicted on the maps set out in the order as "Certified – urban capable land" or "Certified – major transport corridor".

## Schedule 4 Transport project components

### Division 1 Pyrmont Peninsula (Sydney Metro)

- (1) A TPC for a housing and productivity contribution 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) The TPC amounts for Pyrmont Peninsula only apply 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
Non-strata multi-dwelling development	\$15,000	new non-strata 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 Order—
 

**Pyrmont Peninsula (Sydney Metro) Area** means the land identified as Pyrmont Peninsula (Sydney Metro) land on the Transport Project Component – Pyrmont Peninsula (Sydney Metro) Map 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 matters relating to former SIC determinations

### 1 Interpretation

- (1) In this Schedule, 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) amending Act,
- (d) former section 7.23,
- (e) former section 7.24,
- (f) former SIC provisions.

- (2) In this Schedule—

**continuing SCA** means a special contributions area continued by Schedule 4 to the Act.

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

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

**former SCA** means a special contributions area that is not continued in force by Schedule 4 to the Act.

### 2 Repeal of 7.24 determinations and 7.23 directions

The following 7.24 determinations and associated 7.23 directions are repealed on the commencement of this Order—

Former SCA	7.23 determination	7.24 direction
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.

### 3 Continuation of 7.23 determinations and 7.24 directions

The following 7.23 determinations and 7.24 directions continue in force in accordance with clause 1 of Schedule 4 to the Act—

<b>Continuing SCA</b>	<b>7.23 determination</b>	<b>7.24 direction</b>
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>

### 4 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 development application that was lodged before the commencement of this Order, but not yet finally determined.
- (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) To avoid doubt, any condition of development consent imposed in accordance with a former 7.24 direction, or by the Minister, as provided for by 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 is taken to be imposed in the terms required by the direction and 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.

## **5 Special infrastructure works-in-kind agreement**

- (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 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.
- (3) A reference in a SIC WIK agreement to a special infrastructure contribution, entered into before the commencement of this Order, is to be read as including a reference to a housing and productivity contribution if—
  - (a) the agreement allows 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, and
  - (b) a condition requiring a housing and productivity contribution is imposed for development on land in the former SCA.

To avoid doubt, a SIC discharge balance cannot be applied, by virtue of this clause, to meet an obligation to make a housing and productivity contribution in respect of development on land outside the former SCA.

However, this clause does not prevent a SIC WIK agreement being amended for that purpose.

- (4) A SIC WIK agreement is taken to be an agreement referred to in clause 19 in so far as this clause allows a SIC discharge amount to be applied to meet an obligation to make a housing and productivity contribution.

## **6 Development that straddles a continuing SCA and region**

- (1) A special infrastructure contribution and a housing and productivity contribution for a development that is partly within a continuing SCA and partly within an adjacent region are to be determined separately for that part of the development within the continuing SCA and that part of the development in the region, respectively. The total amount payable in respect of the development is the sum of those separately determined amounts.
- (2) However, if a building or proposed building, or an existing lot or proposed lot in a residential subdivision, to which the development consent relates straddles the boundary of the continuing SCA and the region, it is to be treated as wholly within the region for the purpose of calculating any special infrastructure contribution and housing and productivity contribution, respectively, for the development authorised by the development consent.
- (3) To avoid doubt, 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.