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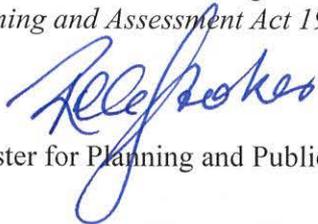
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## Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Public Spaces, in pursuance of section 7.23 of the *Environmental Planning and Assessment Act 1979*, make the following Determination.



Minister for Planning and Public Spaces

Dated: 14<sup>th</sup> May, 2021.

### 1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021*.

### 2 Commencement

This Determination takes effect on the date of its publication in the Gazette.

### 3 Land to which Determination applies

This Determination applies to the Illawarra Shoalhaven Special Contributions Area.

### 4 Objective of Determination

The objective of this Determination is to provide for special infrastructure contributions to be made to the provision of infrastructure in connection with the intensification of urban residential development in the Illawarra Shoalhaven Special Contributions Area.

### 5 Definitions

(1) In this Determination:

***biodiversity certified land*** has the same meaning as it has in the *Biodiversity Conservation Act 2016* and includes land that is taken to be biodiversity certified land under the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

**Calderwood Tallawarra Sub-Growth Area** means the area identified as Calderwood Tallawarra Sub-Growth Area on the map marked “Illawarra Shoalhaven Special Contributions Area”.

**contribution rate** – see clauses 11 and 12.

**CPI number** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics.

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

**development consent** includes a complying development certificate.

**greenfield residential land** means any of the following kinds of land:

- (a) land within a residential zone,
- (b) land (other than land described in paragraph (a)):
  - (i) that adjoins land in a residential zone, and
  - (ii) on which development for a purpose permitted within the adjoining residential zone 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.

**Growth Area** means Nowra Bomaderry Growth Area and West Lake Illawarra Growth Area.

**Illawarra Shoalhaven Special Contributions Area** means the special contributions area of that name, as described in Schedule 4 to the Act.

**infrastructure** has the same meaning as it has in Subdivision 4 of Division 7.1 of the Act.

**map marked “Illawarra Shoalhaven Special Contributions Area”** means the map marked “Illawarra Shoalhaven Special Contributions Area” referred to in Schedule 4 to the Act.

**Note.** A copy of the map is reproduced in Schedule 1 for information only. The map is able to be viewed on the NSW legislation website:  
<https://www.legislation.nsw.gov.au/#!/view/act/1979/203/sch4>.

**Nowra Bomaderry Growth Area** means the areas identified as Nowra Bomaderry Growth Area on the map marked “Illawarra Shoalhaven Special Contributions Area”.

**planning agreement** means a voluntary agreement referred to in section 7.4 of the Act with the Minister (whether or not another planning authority is also a party to the agreement).

**public housing** has the same meaning as it has in the *Housing Act 2001*.

**residential zone** means any of the following land use zones:

- (a) Zone R1 General Residential,
- (b) Zone R2 Low Density Residential,
- (c) Zone R3 Medium Density Residential,
- (d) Zone R4 High Density Residential,
- (e) Zone R5 Large Lot Residential,
- (f) Zone E4 Environmental Living.

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

**social housing provider** means any of the following:

- (a) the New South Wales Land and Housing Corporation constituted by the *Housing Act 2001*,
- (b) a registered community housing provider within the meaning of the Community Housing Providers National Law (NSW),
- (c) the Aboriginal Housing Office constituted by the *Aboriginal Housing Act 1998*,
- (d) a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,
- (e) a provider of specialist disability accommodation under the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
- (f) a local government authority that provides affordable housing,
- (g) a not-for-profit organisation that is a direct provider of rental housing to tenants.

**special infrastructure contribution works-in-kind agreement** – see clause 24.

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

**Sub-Growth Area** means Calderwood Tallawarra Sub-Growth Area and West Dapto Sub-Growth Area.

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

**West Dapto Sub-Growth Area** means the area identified as West Dapto Sub-Growth Area on the map marked “Illawarra Shoalhaven Special Contributions Area”.

**West Lake Illawarra Growth Area** means the areas identified as Calderwood Tallawarra Sub-Growth Area or West Dapto Sub-Growth Area on the map marked “Illawarra Shoalhaven Special Contributions Area”.

- (2) Words or expressions used in this Determination have the same meanings as they have in the Act, unless otherwise defined.

**Note.** See section 1.4 of the *Environmental Planning and Assessment Act 1979* for definitions generally and section 6.2 of the Act for the meaning of subdivision of land.

**Standard instrument terms**

- (3) The following words or expressions have the same meanings as they have in the Standard Instrument:
- (a) dwelling,
  - (b) emergency services facility,
  - (c) health services facility,
  - (d) passenger transport facility,
  - (e) place of public worship,
  - (f) public utility undertaking,
  - (g) recreation area,
  - (h) school,
  - (i) seniors housing.

**Biodiversity certified land**

- (4) A reference to biodiversity certified land in this Determination is a reference only to land that has been biodiversity certified pursuant to an application in relation to West Dapto Urban Release Area made by Wollongong City Council under Part 7AA of the *Threatened Species Conservation Act 1995* or under Part 8 of the *Biodiversity Conservation Act 2016*.

**Consumer Price Index**

- (5) If the Consumer Price Index (All Groups Index) for Sydney ceases to be published or issued by the Australian Bureau of Statistics, a reference in this Determination to the index is taken to be a reference instead to an index designated by the Minister for the purposes of this Determination.

**SIC WIK agreements**

- (6) A reference in this Determination to the Minister in relation to a special infrastructure contribution works-in-kind agreement includes a reference to the Planning Secretary, or other officer of the Department of Planning, Industry and Environment, acting for and on behalf of the Crown in right of the State of New South Wales.
- (7) To avoid doubt, in this Determination *construction certificate* does not include a subdivision works certificate.

**6 Development for which SIC must be made**

- (1) Except as provided by this Determination, a special infrastructure contribution must be made for development on land that, when development consent for the development is granted, is greenfield residential land within the Illawarra Shoalhaven Special Contributions Area.

**Note.** A special infrastructure contribution may be imposed only as a condition of development consent, including a complying development certificate. See the direction given by the Minister

under section 7.24 of the *Environmental Planning and Assessment Act 1979* to consent authorities and registered certifiers to impose a condition to require a special infrastructure contribution in accordance with this Determination on a grant of consent given on or after the date on which this Determination takes effect.

**Exemptions for certain kinds of development**

- (2) A special infrastructure contribution is not required to be made for development for the purpose of any of the following:
- (a) school,
  - (b) TAFE establishment,
  - (c) emergency services facility,
  - (d) health services facility owned or operated by a public authority,
  - (e) passenger transport facility,
  - (f) place of public worship,
  - (g) public open space, including a public reserve within the meaning of the *Local Government Act 1993*,
  - (h) drainage reserve within the meaning of the *Local Government Act 1993*,
  - (i) public utility undertaking,
  - (j) bus depot,
  - (k) recreation area,
  - (l) cemetery within the meaning of the *Cemeteries and Crematoria Act 2013*,
  - (m) public amenities or public services, for which development contributions have been imposed under section 7.11 or section 7.12 of the Act, or may be imposed in accordance with a contributions plan that is in force (when consent is granted for the development),
  - (n) infrastructure for which a contribution may be required to be made under this Determination,
  - (o) public housing,
  - (p) seniors housing or affordable housing, if carried out by or on behalf of a social housing provider.
- (3) A special infrastructure contribution is not required to be made for development comprising only development of one or more of the following kinds:
- (a) an alteration (whether internal or external) or an addition to an existing building, including a repair of the building,
  - (b) ancillary development (within the meaning of the Codes SEPP, for the purposes of Part 3A of that policy),
  - (c) attached development, within the meaning of the Codes SEPP,
  - (d) detached development, within the meaning of the Codes SEPP,
  - (e) strata subdivision of an existing building,
  - (f) the demolition of a building or work,
  - (g) the carrying out of a work,
  - (h) a subdivision for the purpose only of rectifying an encroachment on any existing lot.

In this subclause, a reference to the Codes SEPP is a reference to *State Environmental Planning Policy (Exempt and Complying Codes) 2008*.

**No further contribution required**

- (4) If a special infrastructure contribution has been made for development on land in accordance with this Determination, a further special infrastructure contribution is not required to be made for other development on that land, irrespective of whether development consent for the development for which a contribution has already been made was granted before or after the granting of development consent for the other development on that land.
- (5) If a contribution has been made (whether before or after this Determination takes effect) under a planning agreement for the development to which the agreement applies, a special infrastructure contribution is not required under this Determination for other development on the land to which the planning agreement applies, even though that other development is not development to which the planning agreement applies and the application of section 7.24 of the Act is not excluded for that development.

**Note.** A special infrastructure contribution cannot be imposed as a condition of consent to the carrying out of development if a planning agreement made in accordance with section 7.4 of the *Environmental Planning and Assessment Act 1979* excludes the application of section 7.24 to the development. The effect of the above subclause (5) is that a special infrastructure contribution also cannot be required for future development, not covered by the agreement, on the land to which the planning agreement applies.

**Further development not exempt if on land previously excluded from NDA**

- (6) To avoid doubt, if a particular area of land (for example, land that is within a public transport corridor) has been previously excluded from the calculation of the net developable area under this Determination for a SIC development, any further development proposed for that area is not exempt from the requirement to make a special infrastructure contribution (under subclause (4)) merely because a special infrastructure contribution has been previously made under a development consent that applies to land that includes that area.

Accordingly, if the basis for excluding the area from the calculation of the net developable area no longer applies, a contribution may be payable for development on that area.

- (7) 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.

## **7 Special provision for complying development**

Where a complying development certificate to carry out development on greenfield residential land is issued, a special infrastructure contribution is required to be made in respect of the development only if it involves either or both of the following:

- (a) the erection of a new building, such as the erection of a dwelling house as referred to in the Greenfield Housing Code, Housing Code and Rural Housing Code set out in the Codes SEPP,
- (b) subdivision of land.

## **8 Development that is SIC development in part only**

A special infrastructure contribution is required to be made for SIC development under this Determination even if the development consent for the SIC development:

- (a) also authorises development on land outside a Growth Area (including on land outside the Illawarra Shoalhaven Special Contributions Area) or on land that is not greenfield residential land, or
- (b) also authorises development that is not SIC development.

**Note.** A special infrastructure contribution is required to be made for development only to the extent that the development is on greenfield residential land within a Growth Area and is SIC development. See clause 13 (6) about the calculation of the net developable area for SIC development where it is part of a larger development that extends beyond the boundaries of the relevant Growth Area or greenfield residential land.

## **9 Nature of contribution**

- (1) The special infrastructure contribution for SIC development is to be made as:
  - (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 SIC development (being the carrying out of works for the provision of infrastructure for the relevant Growth Area, or the dedication or other provision of land for the purpose of that infrastructure), or
  - (c) a contribution specified in a planning agreement that applies to the SIC development where:
    - (i) the contribution required to be provided under the agreement is for the carrying out of works in relation to an item (or part of an item) of infrastructure specified in Schedule 2 for the relevant Growth Area or for the dedication or other provision of land for the purpose of that infrastructure, and
    - (ii) the agreement does not exclude the application of section 7.24 of the Act to the SIC development, and
    - (iii) the agreement provides that an obligation to make a special infrastructure contribution imposed by a condition of development consent for the SIC development in accordance with this Determination (or other determination under section 7.23 of the Act that applies to the land on which the SIC development may be carried out) may be met (wholly or partly) by the provision of the contribution under the planning agreement.

**Note.** A special infrastructure contribution works-in-kind agreement is an agreement that is entered into after a development consent imposing an obligation to make a special infrastructure contribution has been granted. It is an agreement about how that obligation may be satisfied. A planning agreement as described in section 7.4 of the *Environmental Planning and Assessment Act 1979* is generally entered into before development consent is granted.

- (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 (or a planning agreement of a kind described in subclause (1) (c)).
- (3) Despite subclauses (1) and (2):
  - (a) if SIC development is authorised by a complying development certificate, the special infrastructure contribution for the development is to be made as a monetary contribution, and
  - (b) in the case of SIC development on land within West Dapto Sub-Growth Area (whether or not authorised by a complying development certificate), 25.4% of the amount of the special infrastructure contribution, as calculated in accordance with this Determination, is to be made as a monetary contribution if the land is biodiversity certified land when development consent is granted.

**Note.** West Dapto Sub-Growth Area is the subject of an application for biodiversity certification by Wollongong City Council. If granted, the special infrastructure contribution for development in that area will contribute to the costs of the conservation measures required to be implemented under the order conferring biodiversity certification. 25.4% of the contribution in West Dapto Sub-Growth Area is the amount payable towards the costs of delivering those conservation measures.

## 10 Amount of monetary contribution

The amount of the monetary contribution that is payable as a special infrastructure contribution for SIC development is the amount calculated by applying the contribution rate for the 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:

$$SC_P = NDA \times SCR$$

where:

- SC<sub>P</sub>** is the monetary contribution payable
- NDA** is the net developable area, in hectares, for the development (determined in accordance with clauses 13, 14 and 15)
- SC<sub>R</sub>** is the amount in dollars of the contribution rate, applicable at the date of payment for the development (as provided by clauses 11 and 12).

## 11 Contribution rates

- (1) The contribution rates that apply, at any time before 1 July 2021, in the calculation of the monetary contribution for SIC development are as follows:

<b>Growth Area</b>	<b>Contribution rate</b>
Nowra Bomaderry Growth Area	\$71,584 per hectare of net developable area
<b>West Lake Illawarra Growth Area</b>	
West Dapto Sub-Growth Area	\$124,477 per hectare of net developable area
Calderwood Tallawarra Sub-Growth Area	\$98,388 per hectare of net developable area

- (2) The contribution rate that applies at any time during the 12 month period commencing 1 July 2021, and during each subsequent 12 month period, is to be determined by adjusting the contribution amount in accordance with clause 12 (an *adjusted contribution amount*). Accordingly, the contribution rate for any such period is the adjusted contribution amount per hectare of net developable area.

## **12 Annual adjustment of contribution amounts in contribution rates**

- (1) On 1 July 2021 and on 1 July in each subsequent year, each contribution amount is to be adjusted by multiplying it by the following fraction:

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

where:

*latest CPI number* is the CPI number for the March quarter in the year in which the adjustment is made, and

*base CPI number* is the CPI number for the March quarter in 2020.

(The March quarter is the quarter commencing on and including 1 January and ending on and including 31 March in the same year.)

- (2) However, if the adjustment of the contribution amount under this clause results in a contribution amount that is less than that for the preceding 12 month period, the contribution amount for that preceding 12 month period continues to apply.
- (3) If the adjustment of a contribution amount results in a number that is not a whole number multiple of \$1, the amount is to be rounded up to the nearest whole number multiple of \$1.

## **13 Net developable area**

- (1) The net developable area for SIC development is the area of the land, in hectares, to which the development consent for the development relates, subject to this Determination.

- (2) The following areas are not to be included in the calculation of the net developable area for the SIC development:
- (a) the area of any land that the development consent authorises, or requires, to be used as a road or dedicated as a public road,
  - (b) the area of any existing road (or the area by which it is to be widened) in respect of which the development consent authorises, or requires, road work (such as road widening) to be carried out,
  - (c) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event if the Planning Secretary is satisfied that the area is unsuitable for carrying out the SIC development because it is at or below that level,
  - (d) any area of land within the curtilage of a building listed on the State Heritage Register,
  - (e) any area of land that is within an asset protection zone:
    - (i) that is specified in a bush fire safety authority issued under the *Rural Fires Act 1997*, or
    - (ii) that is required to be established by the development consent for the SIC development,if the Planning Secretary is satisfied that the area is unsuitable for the SIC development because it is in the asset protection zone,
  - (f) any area of land that is the subject of an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Planning Secretary is satisfied that the area is unsuitable for the SIC development because of the easement,
  - (g) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Planning Secretary is satisfied that the area is unsuitable for the SIC development because it is within the public transport corridor.
- (3) For the purposes of subclause (2) (c), (e), (f) and (g), if the development consists of subdivision of land (other than strata subdivision), the Planning Secretary is to consider whether the land is unsuitable for development for any other purpose permissible under any applicable environmental planning instrument (apart from environmental protection works or minor works), rather than whether it is unsuitable for subdivision.
- (4) To avoid doubt, the net developable area does not include any area of land on which the development consent for the SIC development authorises the carrying out of development for the purpose of any of the following, or that is to be reserved, dedicated or otherwise set aside for such a purpose as part of the development (or is already used for such a purpose):

- (a) school,
  - (b) TAFE establishment,
  - (c) emergency services facility,
  - (d) health services facility owned or operated by a public authority,
  - (e) passenger transport facility,
  - (f) place of public worship,
  - (g) public open space, including a public reserve within the meaning of the *Local Government Act 1993*,
  - (h) drainage reserve within the meaning of the *Local Government Act 1993*,
  - (i) public utility undertaking,
  - (j) bus depot,
  - (k) recreation area,
  - (l) cemetery within the meaning of the *Cemeteries and Crematoria Act 2013*,
  - (m) public amenities or public services, for which development contributions have been imposed under section 7.11 or section 7.12 of the Act, or may be imposed in accordance with a contributions plan that is in force (when consent is granted for the relevant development),
  - (n) infrastructure for which a contribution may be required to be made under this Determination,
  - (o) public housing,
  - (p) seniors housing or affordable housing, if provided by or on behalf of a social housing provider.
- (5) A reasonable estimate of the net developable area may be made for the purpose of calculating the monetary contribution payable as a special infrastructure contribution, if the precise determination of the net developable area is not possible because the land concerned spans the boundary of a residential zone, or a Growth Area (or Sub-Growth Area), that does not follow cadastral boundaries or for any other reason.
- (6) To avoid doubt, the net developable area for SIC development does not include the area of any land to which the relevant development consent applies that is not within a Growth Area or is not greenfield residential land.
- (7) In this clause, *curtilage of a building listed on the State Heritage Register* means the curtilage of that building or the site of the building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the *Heritage Act 1977*.

#### 14 Reduction of net developable area

- (1) This clause applies to SIC development involving subdivision of land (other than strata subdivision) if at least one lot that will result from the subdivision will contain a dwelling that existed immediately before the land was included in a residential zone. Any such lot is a *lot with a dwelling* for the purposes of this clause.

- (2) The net developable area of the SIC development does not include the area of any lot with a dwelling if that area is no more than 0.1 hectare and the relevant development consent does not authorise the erection of any additional dwelling on the lot.
- (3) The area of each lot with a dwelling that is more than 0.1 hectare and that will be created as a result of the SIC development is taken to be reduced by 0.1 hectare for the purpose of calculating the net developable area of the development (but only if the relevant development consent does not authorise the erection of any additional dwelling on the lot).
- (4) An exclusion of an area from the calculation of the net developable area of the SIC development, and the operation of clause 15 (2), are not affected by this clause. However, for the purpose of applying clause 13, the area of any lot with a dwelling that is more than 0.1 hectare is the actual area in hectares of the proposed lot, not 0.1 hectare. Only if the net developable area, as calculated applying clause 13, is more than 0.1 hectare is it taken to be reduced by 0.1 hectare under this clause.

**15 Reduction in net developable area where proposed lot within Zone R5 Large Lot Residential or Zone E4 Environmental Living**

- (1) This clause applies to SIC development involving subdivision of land (other than strata subdivision), if any of the lots that will result from the subdivision will be wholly within Zone R5 Large Lot Residential or Zone E4 Environmental Living, or both. Any lot that is more than 0.1 hectare is a *large proposed lot* for the purposes of this clause.
- (2) For the purpose of calculating the net developable area of the SIC development, the area of any large proposed lot is taken to be 0.1 hectare, but only if the relevant development consent has not been granted in reliance on a clause in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument, so as to authorise, not only subdivision, but development on the large proposed lot for a purpose permitted in another residential zone (not being Zone R5 or Zone E4) adjoining the lot.
- (3) An exclusion of an area from the calculation of the net developable area of SIC development is not affected by this clause. However, for the purpose of applying clause 13, the area of the proposed large lot is the actual area in hectares of the proposed lot, not 0.1 hectare. Only if the net developable area, as calculated applying clause 13, is more than 0.1 hectare is it taken to be 0.1 hectare under this clause.

**16 Final decision regarding NDA by the Planning Secretary**

The Planning Secretary may make any decision required to be made for the purpose of calculating the net developable area for SIC 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 of a registered surveyor of the land concerned.

**17 Special provision for SIC development in West Dapto Sub-Growth Area**

- (1) This clause applies to SIC development on land within West Dapto Sub-Growth Area that is not biodiversity certified land when development consent for the development is granted.
- (2) The amount of the monetary contribution that would otherwise be payable for SIC development to which this clause applies is reduced by 25.4%, being the part of the contribution that is for the costs of approved conservation measures that will be required to be implemented if biodiversity certification is conferred on land within West Dapto Sub-Growth Area.

**18 Calculation of contributions if development spans different Sub-Growth Areas**

- (1) This clause applies if a single development consent authorises development within both West Dapto Sub-Growth Area and Calderwood Tallawarra Sub-Growth Area.
- (2) The total amount of the monetary contribution for SIC development to which this clause applies is to be calculated by separately determining the contribution amount payable under this Determination for each part of the development on land within each of the Sub-Growth Areas, in so far as it is practicable to do so. The total amount of the monetary contribution payable is the sum of those separately determined contribution amounts.

**19 When is monetary contribution to be paid**

- (1) If a special infrastructure contribution for SIC development is to be made as a monetary contribution, it must be paid before:
  - (a) any subdivision certificate is issued in relation to a plan of subdivision, where the relevant development consent authorises the subdivision, or
  - (b) any construction certificate is issued in relation to building work the subject of the relevant development consent,

whichever is the earlier.

- (2) Despite subclause (1), if a complying development certificate is issued for SIC development, the special infrastructure contribution must be paid:
  - (a) within 60 days of the date endorsed on the certificate as the date on which it becomes effective and operates and, in the case of a “deferred commencement” certificate (being a certificate subject to a condition of a kind referred to in section 4.28 (9A) of the Act), within 60 days of it operating, or
  - (b) before the commencement of any work authorised by the certificate,

whichever is the earlier.

## **20 Payment of monetary contribution for SIC development involving only subdivision**

- (1) This clause:
- (a) applies to a SIC development that involves only the subdivision of land (including subdivision work but not strata subdivision) (a *SIC surface subdivision*), and
  - (b) applies even if the development consent for the SIC development also authorises the demolition of existing buildings or the carrying out of a work,

but does not apply where a complying development certificate authorises the SIC development.

- (2) Despite clause 19, 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 development consent for the SIC surface subdivision, the monetary contribution for the subdivision 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 is to 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 a plan of subdivision for which the subdivision certificate is sought that may be further subdivided in accordance with the development consent for the SIC surface subdivision.

## **21 Payment of monetary contribution for SIC where different kinds of development on different parts of land**

- (1) This clause applies if a single development consent (not being a complying development certificate) for SIC development authorises:
- (a) the subdivision of land (including subdivision work but not strata subdivision) (a *SIC surface subdivision*), on one parcel or parcels of land, but not development of another type, and
  - (b) other development on a different parcel or parcels of land (*SIC building work*), but not the surface subdivision of those parcels.

However, it does not matter, for the purpose of the application of this clause, whether the single development consent also authorises the demolition of a building or work, or the carrying out of a work, on the land subject to the SIC surface subdivision.

- (2) Despite clause 19, the special infrastructure contribution for the SIC development (if made as a monetary contribution) is to be paid:
  - (a) at the earliest time by which payment would, but for this clause, be required to be made for the development, or
  - (b) as provided by subclause (3).
- (3) Separate monetary contributions may be made for the SIC surface subdivision and the SIC building work, respectively, as if separate development consents had been granted for these. Accordingly:
  - (a) the monetary contribution for the SIC surface subdivision may be paid before the issue of a subdivision certificate in relation to the plan of subdivision (or in accordance with clause 20), and
  - (b) the monetary contribution for the SIC building work may be paid before the issue of a construction certificate in relation to that work.

## **22 Deferral of payment during COVID-19 pandemic period**

### **Application of clause**

- (1) This clause applies only to a development consent that is granted during the pandemic period and that authorises the erection of a new building or a change of use of an existing building, and only if Part 6 of the Act will require an occupation certificate for:
  - (a) the commencement of the occupation or use of the whole or part of the new building, or
  - (b) the commencement of a change of building use for the whole or any part of the building.
- (2) However, this clause does not apply in any of the following circumstances:
  - (a) the estimated cost of the development that is the subject of the development consent is less than \$10,000,000, as determined in accordance with the *Environmental Planning and Assessment Regulation 2000* for the purpose of calculating the fee for the development application to carry out the development,
  - (b) the development consent authorises the subdivision of land that will result in the creation of additional lots, as well as authorising the erection of a building or a change of use of an existing building,
  - (c) the development is authorised by a complying development certificate.

### **SIC not required until occupation certificate stage**

- (3) Despite clause 19, the special infrastructure contribution required by a development consent to which this clause applies, if made as a monetary contribution, may be paid at

any time before the issue of the first occupation certificate in respect of any of the buildings to which the development consent relates, and is not required to be paid before the issue of a construction certificate in relation to the building work involved.

- (4) However, if no construction certificate in relation to any such building work has been issued on or before 25 September 2022, the special infrastructure contribution, if outstanding, must be paid before the issue of a construction certificate for the building work.

**Interpretation**

- (5) In this clause:
  - (a) *pandemic period* means the prescribed period within the meaning of section 10.17 of the Act, and
  - (b) *subdivision of land* does not include the procurement of the registration of a strata plan or strata plan of subdivision, within the meaning of the *Strata Schemes Development Act 2015*.

**Note.** Under section 10.17 of the *Environmental Planning and Assessment Act 1979*, the prescribed period commenced on 25 March 2020. It ends on 31 March 2022.

**23 Reduction of rate for first 2 years**

If a special infrastructure contribution is made as a monetary contribution:

- (a) at any time before 1 July 2022 – the amount that would otherwise be payable is reduced by one half, and
- (b) at any time between 1 July 2022 and 30 June 2023 – the amount that would otherwise be payable is reduced by one quarter.

**24 Special infrastructure contribution works-in-kind agreement**

- (1) For the purposes of this Determination, a special infrastructure contribution works-in-kind agreement is an agreement that meets the requirements set out in this clause.
- (2) A special infrastructure contribution works-in-kind agreement is an agreement between the Minister and the developer for the carrying out of works to provide an item (or part of an item) of infrastructure specified in Schedule 2, or for the dedication or other provision of land for the purpose of any such infrastructure, in lieu (in part or in whole) of the payment of a monetary contribution for the development concerned.
- (3) A special infrastructure contribution works-in-kind agreement, in relation to the carrying out of works, is to:
  - (a) specify or acknowledge the monetary contribution that would otherwise be payable for the SIC development, and

- (b) describe the works that are to be, or may be, carried out by or on behalf of the developer to contribute to the provision of a specified item or items of infrastructure in lieu of a monetary contribution, and
  - (c) specify the attributable cost of the item or items of infrastructure and provide for the adjustment of that cost in a manner that is consistent with the adjustment of the contribution amount under this Determination, and
  - (d) provide that the maximum amount of the liability to make the special infrastructure contribution that may be discharged by the carrying out of the works is not to exceed the attributable cost of the item or items of the infrastructure, and
  - (e) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution or in circumstances where the works concerned are not completed by the time at which the contribution, if made as a monetary contribution, would have been required to be made under this Determination.
- (4) A special infrastructure contribution works-in-kind agreement, in relation to the dedication or other provision of land, is to:
- (a) specify or acknowledge the monetary contribution that would otherwise be payable for the SIC development, and
  - (b) specify the time by which the land is to be dedicated or otherwise provided, and
  - (c) specify the value of that land, or the manner in which the value of that land is to be calculated, and
  - (d) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution or in circumstances where the land concerned is not dedicated or otherwise provided by the time at which the contribution, if made as a monetary contribution, would have been required to be made under this Determination.
- (5) In this clause, *attributable cost*, in relation to an item of infrastructure, means the amount specified in Schedule 2 for that item.

**Note.** The decision to negotiate or enter into a special infrastructure contribution works-in-kind agreement as proposed by a developer is entirely at the Minister's discretion. The developer is not entitled to enter into any such agreement in lieu of making a monetary contribution. For example, if the NSW Government gives priority to providing one item of infrastructure over another, then the Minister may decide not to agree to the developer providing that other item.

## **25 Matters for which special infrastructure contribution is made**

- (1) For the purpose of section 7.23 (3A) of the Act:
- (a) 1.5% of a special infrastructure contribution required to be made by this Determination is for matters specified in section 7.22 (1) (d) of the Act, and
  - (b) 25.4% of a special infrastructure required to be made by this Determination for SIC development in West Dapto Sub-Growth Area is for the provision of infrastructure

by Wollongong City Council, but only if the SIC development is on land that is biodiversity certified land when development consent for the development is granted.

**Note.** The matters specified in section 7.22 (1) (d) of the *Environmental Planning and Assessment Act 1979* are the carrying out of any research or investigation, preparing any report, study or instrument, and doing any other matter or thing in connection with the exercise of any statutory function under the Act, by the Minister, the Planning Ministerial Corporation, the Planning Secretary or the Department of Planning, Industry and Environment.

- (2) For the purposes of section 7.32 (6) of the Act, affordable housing is not a class of infrastructure for which special infrastructure contributions are required to be made under this Determination.

## **26 Reasons for the level and nature of the special infrastructure contribution**

For the purpose of section 7.23 (5) of the Act, the reasons for the level and nature of special infrastructure contributions required to be made by this Determination are as follows:

- (a) to assist in providing adequate funding for State and regional public infrastructure (described in Schedule 2) in the Illawarra Shoalhaven Special Contributions Area,
  - (b) to ensure that future development bears a share of the cost of the provision of such infrastructure,
  - (c) to provide for the adjustment of special infrastructure contributions to reflect changes in economic conditions between the time of imposing the contribution and the time at which the contribution is made,
  - (d) to provide flexibility as to the manner in which special infrastructure contributions may be made,
  - (e) to ensure that special infrastructure contributions reflect a reasonable apportionment between the demand for infrastructure generated by existing development and the demand for that infrastructure that is likely to be generated by new development for which contributions must be paid,
  - (f) to ensure that the level of special infrastructure contributions does not adversely affect housing supply.
-

## SCHEDULE 1 – SPECIAL CONTRIBUTIONS AREA

**NSW** Planning, Industry & Environment

**Environmental Planning and Assessment Amendment (Illawarra Shoalhaven Special Contributions Area) Order 2021**

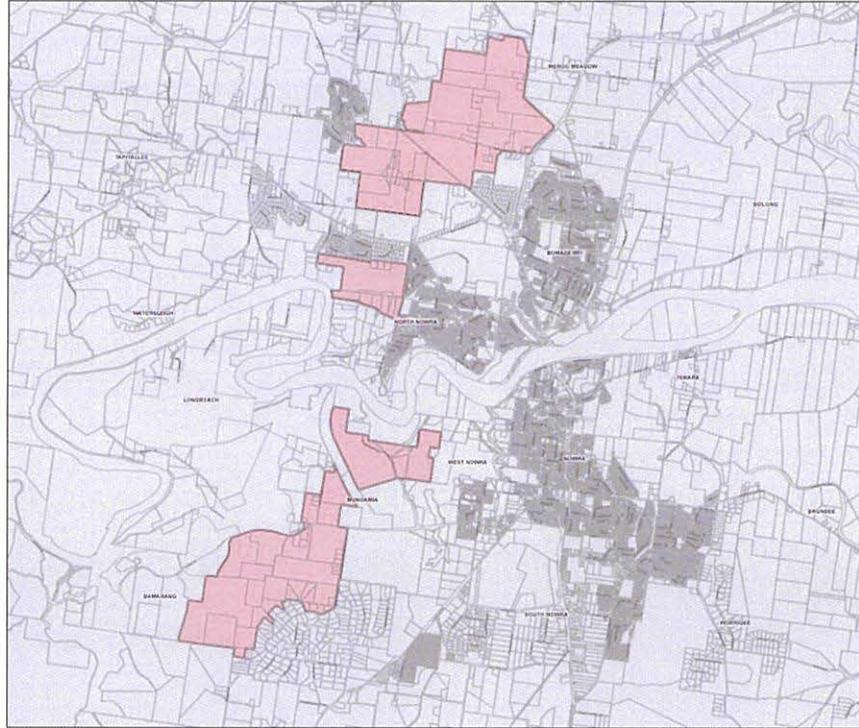
Environmental Planning and Assessment Act 1979  
Illawarra Shoalhaven  
Special Contributions Area Map  
- Sheet SCA\_NB\_001

**Special Contributions Area**  
 Newerz Bomanya

Cadastral  
 Cadastral 15/03/2021 © Spatial Services



Scale: 1:50,000 @ A3



**NSW** Planning, Industry & Environment

**Environmental Planning and Assessment Amendment (Illawarra Shoalhaven Special Contributions Area) Order 2021**

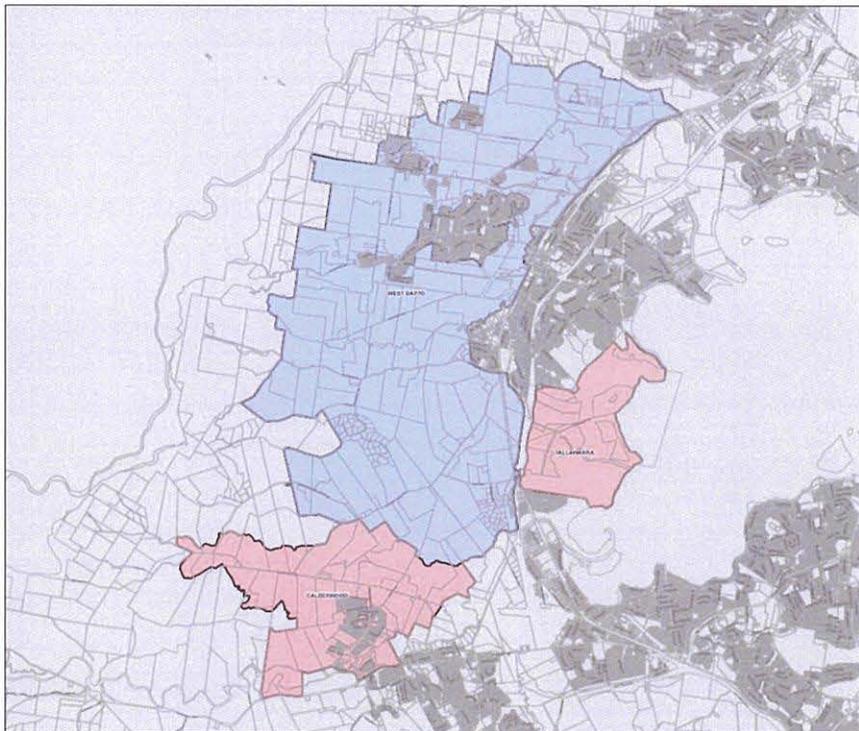
Environmental Planning and Assessment Act 1979  
Illawarra Shoalhaven  
Special Contributions Area Map  
- Sheet SCA\_WLI\_001

**Special Contributions Area**  
 West Cato  
 Cadernwood Taralga

Cadastral  
 Cadastral 15/03/2021 © Spatial Services



Scale: 1:50,000 @ A3



**SCHEDULE 2 – LIST OF INFRASTRUCTURE**

<b>Infrastructure item</b>	<b>100% Attributable Cost</b>	<b>Project cost funded through contributions</b>
<b>Road and Intersection Upgrades</b>		
<b>Nowra Bomaderry</b>		
New Moss Vale Road main road intersection	\$3,232,627	\$323,262
Moss Vale Road capacity and intersection upgrades	\$20,838,735	\$2,083,873
Bells Lane Collector Road (Pestells Lane to Moss Vale Road)	\$18,318,223	\$1,831,822
East Nowra sub-arterial road Stage 1 (Princes Highway to North Kalandar Street)	\$33,470,036	\$3,347,003
East Nowra sub-arterial road Stage 2 (Kalandar Street to Princes Highway/Warra Warra Road)	\$26,048,419	\$2,604,841
Princes Highway capacity and intersection upgrades between Bomaderry and South Nowra	\$156,290,516	\$15,629,051
<b>West Lake Illawarra</b>		
Yallah interchange	\$74,186,565	\$7,418,656
Improved access to and connectivity with the M1 Motorway between Tallawarra and Five Island Road	\$87,787,430	\$8,778,743
Improved efficiency/capacity upgrades to the M1 Motorway between Tallawarra and Five Islands Road	\$77,895,891	\$7,789,589
Illawarra Highway upgrade	\$49,457,710	\$4,945,771
Northcliffe Drive extension	\$74,186,565	\$7,418,656
Princes Highway upgrade x 2 intersections	\$17,186,554	\$1,718,655
West Lake Illawarra major road spine	\$260,000,000	\$26,000,000
Upgrade of Tripoli Way extension to State road	\$43,002,952	\$4,300,295
<b>Education</b>		
<b>Nowra Bomaderry</b>		
Provision of primary and secondary school student places	\$4,663,875	\$466,387
<b>West Lake Illawarra</b>		
Provision of primary and secondary school student places	\$15,979,025	\$1,597,902
<b>Active Transport</b>		
<b>Nowra Bomaderry</b>		
New Moss Vale Road North and South shared user path (SUP) and cycleway network (Nowra to Berry)	\$10,409,060	\$1,040,906
Improved active and public transport options including multi modal interchanges and facilities (planning and	\$5,000,000	\$500,000

design)		
<b>Regional Open Space</b>		
<b>Nowra Bomaderry</b>		
Nowra Riverfront and Shoalhaven Community and Recreation Precinct	\$25,000,000	\$2,500,000
<b>Emergency Services</b>		
<b>Nowra Bomaderry</b>		
Nowra Shoalhaven fire station	\$5,799,336	\$579,933
<b>Community Health facilities</b>		
<b>Nowra Bomaderry</b>		
Redevelopment and expansion of Nowra Community Health Centre	\$21,088,495	\$2,108,850
<b>Biodiversity</b>		
<b>West Lake Illawarra</b>		
West Dapto Biodiversity	\$20,000,000	\$20,000,000
<b>Planning and Delivery</b>		
Nowra Bomaderry and West Lake Illawarra		\$1,899,412
<b>TOTAL</b>		<b>\$124,883,607</b>

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**Order under clause 5 of Schedule 2 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017***

Under delegation from the Minister for Planning, I declare the development specified in *column 1 of the table in Schedule 1 to this Order on the land specified in the corresponding row in column 2 of the table in Schedule 1 to this Order to be State significant infrastructure under clause 5 of Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017, for the purposes of the Environmental Planning and Assessment Act 1979 (the Act).*

This Order takes effect upon publication in the *New South Wales Government Gazette*.

Dated: 27 May 2021



Glenn Snow

Director, Transport Assessments

## SCHEDULE 1

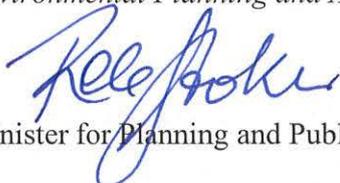
<b>Column 1</b>	<b>Column 2</b>
<b>Development</b> The development known as 'New Crossing of the Murray River between Barooga (NSW) and Cobram (Victoria)'(S01/02296) approved by the Minister under Division 4 Part 5 of the Act on the 19 October 2004.	<b>Land</b> Land identified in the Director General's report within the towns of Barooga and Cobram.

## Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Direction 2021

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning and Public Spaces, in pursuance of section 7.24 of the *Environmental Planning and Assessment Act 1979*, give the following Direction.



Minister for Planning and Public Spaces

Dated: 14<sup>th</sup> May, 2021.

### 1 Name of Direction

This Direction is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Direction 2021*.

### 2 When Direction takes effect

This Direction takes effect on its publication in the Gazette.

### 3 Councils and other planning bodies to whom Direction is given

(1) This Direction is given to:

- (a) consent authorities in relation to development within the Illawarra Shoalhaven Special Contributions Area, and
- (b) councils and registered certifiers when determining applications for complying development certificates in relation to development within the Illawarra Shoalhaven Special Contributions Area.

(2) To avoid doubt, this Direction also applies to:

- (a) any local planning panel when exercising, on behalf of a council constituted for a local government area that includes land within the Illawarra Shoalhaven Special Contributions Area, the functions of the council as a consent authority, and
- (b) any officer or employee of such a council to whom the council delegates its functions as a consent authority.

**Note.** The consent authorities to whom the direction is given include the councils for the local government areas of Shellharbour, Shoalhaven and Wollongong, and Southern Regional Planning Panel. The Independent Planning Commission is also subject to the direction when determining development applications for development in the special contributions area.

#### **4 Condition for special infrastructure contribution must be imposed on grant of development application**

A consent authority must impose the following condition on the grant of consent to a development application to carry out development on greenfield residential land within the Illawarra Shoalhaven Special Contributions Area if a special infrastructure contribution is required to be made for that development under the *Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021*:

*A special infrastructure contribution must be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021 (as in force when this development consent takes effect).*

*A person may not apply for a subdivision certificate, construction certificate or occupation certificate (as the case may require, having regard to the Determination) in relation to development the subject of this development consent unless the person provides, with the application, written evidence from the Department of Planning, Industry and Environment that the special infrastructure contribution for the development (or that part of the development for which the certificate is sought) has been made or that arrangements are in force with respect to the making of the contribution.*

#### **More information**

A request for assessment by the Department of Planning, Industry and Environment of the amount of the contribution that is required under this condition can be made through the NSW planning portal (<https://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service>). Please refer enquiries to [SIContributions@planning.nsw.gov.au](mailto:SIContributions@planning.nsw.gov.au).

#### **5 Condition for special infrastructure contribution that must be imposed on CDC by Council**

A council must impose the following condition on the grant of any application for a complying development certificate to carry out development on greenfield residential land within the Illawarra Shoalhaven Special Contributions Area if a special infrastructure contribution is required to be made for that development under the *Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021*:

*A special infrastructure contribution must be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021 (as in force when this complying development certificate takes effect).*

*Accordingly, the special infrastructure contribution must be made:*

- (a) within 60 days of the date endorsed on this certificate as the date on which it becomes operative or, if this certificate is a “deferred commencement” certificate (being a certificate subject to a condition of a kind referred to in section 4.28 (9A) of the Environmental Planning and Assessment Act 1979), within 60 days of it operating, or*
- (b) before the commencement of any work authorised by this certificate,*

*whichever is the earlier.*

### **More information**

A request for assessment by the Department of Planning, Industry and Environment of the amount of the contribution that is required under this condition can be made through the NSW planning portal (<https://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service>). Please refer enquiries to [SIContributions@planning.nsw.gov.au](mailto:SIContributions@planning.nsw.gov.au).

### **6 Condition for special infrastructure contribution that must be imposed on CDC by registered certifier**

- (1) This clause applies to an application for a complying development certificate to carry out development on greenfield residential land within the Illawarra Shoalhaven Special Contributions Area where the development involves the erection of a new building or the subdivision of land (or both). However, it does not apply to development to which the Fire Safety Code or the General Development Code applies.
- (2) A registered certifier must impose the following condition on the grant of any application for a complying development certificate to which this clause applies:

*The proponent (being the person having the benefit of this complying development certificate) must obtain a determination from the Secretary of the Department of Planning, Industry and Environment as to whether a special infrastructure contribution must be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021 (**Determination**):*

- (a) *within 20 working days of the date endorsed on this certificate as the date on which it becomes operative, or*
- (b) *if this certificate is a “deferred commencement” certificate (being a certificate subject to a condition of a kind referred to in section 4.28 (9A) of the Environmental Planning and Assessment Act 1979), within 20 working days of it operating.*

*If the Secretary determines that a special infrastructure contribution must be made, the contribution must be made in accordance with the Determination. Accordingly, the contribution is to be made as a monetary contribution:*

- (a) *within 60 days of the date endorsed on this certificate as the date on which it becomes operative or, if this certificate is a “deferred commencement” certificate, within 60 days of it operating, or*
- (b) *before the commencement of any work authorised by this certificate,*

*whichever is the earlier.*

### **More information**

A request for assessment by the Department of Planning, Industry and Environment of the amount of the contribution that is required under this condition can be made through the NSW planning portal (<https://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service>). Please refer enquiries to [SIContributions@planning.nsw.gov.au](mailto:SIContributions@planning.nsw.gov.au).

## 7 Special condition where concept development application

- (1) This clause applies to a concept development application within the meaning of section 4.22 of the *Environmental Planning and Assessment Act 1979* if the concept proposals for the development of the site include proposals for development on greenfield residential land within the Illawarra Shoalhaven Special Contributions Area (*relevant concept development application*).
- (2) A consent authority must impose the following condition on the grant of consent to a relevant concept development application (other than a consent to which subclause (3) applies):

*The Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021 requires special infrastructure contributions to be made for development on greenfield residential land within the Illawarra Shoalhaven Special Contributions Area (within the meaning of that Determination).*

*Accordingly, any special infrastructure contribution imposed by a condition of consent to a subsequent development application in relation to the site to which this consent applies is to be determined in accordance with that Determination, or any subsequent determination of the Minister under section 7.23 of the Environmental Planning and Assessment Act 1979, as in force when the later consent takes effect.*

- (3) A consent authority must impose the following condition on the grant of consent for the first stage of development set out in a relevant concept development application if the *Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021* requires a special infrastructure contribution to be made for that development:

*A special infrastructure contribution must be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021 (2021 Determination), as in force when this consent takes effect, for the first stage of development to which this consent applies.*

*A person may not apply for a subdivision certificate, construction certificate or occupation certificate (as the case may require, having regard to the 2021 Determination) in relation to the first stage of development unless the person provides, with the application, written evidence from the Department of Planning, Industry and Environment that the special infrastructure contribution for the first stage of development (or that part of the development for which the certificate is sought) has been made or that arrangements are in force with respect to the making of the contribution.*

*A special infrastructure contribution may also be required to be made for further development that consists of, or involves, development on greenfield residential land*

*within the meaning of the 2021 Determination on the site to which this consent applies.*

*Any special infrastructure contribution imposed by a condition of consent to a subsequent development application is to be determined in accordance with the 2021 Determination, or any subsequent determination of the Minister under section 7.23 of the Environmental Planning and Assessment Act 1979, as in force when that later consent takes effect.*

#### **More information**

*A request for assessment by the Department of Planning, Industry and Environment of the amount of the contribution that is required under this condition can be made through the NSW planning portal (<https://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service>). Please refer enquiries to [SIContributions@planning.nsw.gov.au](mailto:SIContributions@planning.nsw.gov.au).*

**Note to consent authorities.** When imposing a condition for a special infrastructure contribution on the grant of consent to a subsequent development application to which consent to a concept development application applies, the consent authority is to impose the condition in the terms set out in clause 4 of this Direction.

## **8 Pending development applications**

This Direction extends to development applications and applications for complying development certificates made, but not finally determined, before this Direction takes effect.

## **9 Definitions**

(1) In this Direction:

*Fire Safety Code* has the same meaning as it has in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

*General Development Code* has the same meaning as it has in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

*greenfield residential land* has the same meaning as it has in the *Environmental Planning and Assessment (Special Infrastructure Contribution – Illawarra Shoalhaven) Determination 2021*.

*Illawarra Shoalhaven Special Contributions Area* means the special contributions area of that name, as described in Schedule 4 to the *Environmental Planning and Assessment Act 1979*.

(2) Words or expressions in this Direction have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.