



# *Government Gazette*

of the State of

New South Wales

**Number 142–Planning and Heritage**

**Friday, 1 April 2022**

---

The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, non-government and other notices.

Each notice in the Government Gazette has a unique reference number that appears in parentheses at the end of the notice and can be used as a reference for that notice (for example, (n2019-14)).

The Gazette is compiled by the Parliamentary Counsel's Office and published on the NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)) under the authority of the NSW Government. The website contains a permanent archive of past Gazettes.

To submit a notice for gazettal, see the Gazette page.

**NATIONAL PARKS AND WILDLIFE ACT 1974**

**Rocky Knob, Hexham Wetlands Aboriginal Place**

Pursuant to s.84 of the *National Parks and Wildlife Act 1974*, I, the Minister for Heritage, being of the opinion that the place known as Rocky Knob is, and was, of special significance to Aboriginal culture, declare the lands described in schedule "A" as an Aboriginal Place.

The values for which the Rocky Knob Aboriginal Place has been assessed as being significant to Aboriginal culture include, but are not limited to: its importance to the Awabakal People and all Aboriginal people of the Hunter Valley as a place of spiritual connection and ceremony, a place where cultural practices and stories can be passed on to future generations.

The area of Rocky Knob and its surrounds have connections through links in Songlines (cultural pathways) to Mount Sugarloaf, Black Hill Ridge and Doghole Cultural Site in Stockrington. The elevated site of Rocky Knob has views to all the surrounding areas including views to Mount Sugarloaf in the Southwest, Black Hill Ridge in the west, Tarro to the north and Newcastle to the southeast. Rocky Knob is visible from each of these locations as a high point in an area of relatively flat terrain. All these sites are of cultural significance to the Awabakal people, with this knowledge being passed down from generation to generation.

The site is known to the local Aboriginal people as a place for spiritual practice, a place where the Pambalong Clan of the Awabakal People came for burial ceremonies and to pay respect to those who passed into the next life. The site has the potential to contribute to our understanding of Aboriginal cultural practices in the Hunter Region and to NSW Aboriginal culture and history.

The Hon James Griffin MP  
**Minister for Environment and Heritage**

Sydney this 17<sup>th</sup> day of March 2022

**SCHEDULE "A"**

All those pieces or parcels of land known as Lot 51 DP 1181868 in the Parish of Hexham, County of Northumberland approximately 9.6 hectares, being the areas defined by the red boundary line in the curtilage plan below.



**Proposed Aboriginal Place:  
Rocky Knob  
Hexham**

0 100 200 300 metres

Scale: 1:6,000 @A4  
Datum/Projection: GCS GDA 1994  
Date: 30/06/2021



**Legend**

- Rocky Knob Aboriginal Place Proposed Boundary
- LGAs
- Suburbs
- Land Parcels

**HERITAGE ACT 1977**

**NOTICE OF LISTING ON THE STATE HERITAGE REGISTER  
UNDER SECTION 37(1)(b)**

**Bathurst City Uniting Church and Chapel  
(including William Davidson pipe organ) and its setting  
140A and 140B William Street Bathurst**

**SHR No. 02058**

In pursuance of section 37(1)(b) of the *Heritage Act 1977 (NSW)*, the Heritage Council gives notice that the item of environmental heritage specified in Schedule "A" has been listed on the State Heritage Register in accordance with the decision of the Minister for Environment and Heritage made on 17 March, 2022 to direct the listing. This listing applies to the curtilage or site of the item, being the land described in Schedule "B".

**Heritage Council of New South Wales**

**SCHEDULE "A"**

The item known as the Bathurst City Uniting Church and Chapel (including William Davidson pipe organ) and its setting, situated on the land described in Schedule "B".

**SCHEDULE "B"**

All those pieces or parcels of land known as Lot 1 and Lot 2 of DP 783440 in Parish of Bathurst, County of Bathurst shown on the plan catalogued HC 3240 in the office of the Heritage Council of New South Wales.

# Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) 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.

ROB STOKES, MP

Minister for Planning and Public Spaces

Dated: 7 December 2021

## 1 Name of Direction

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

## 2 When Direction takes effect

This Direction takes effect on the date of 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 Frenchs Forest Special Contributions Area, and
- (b) councils and registered certifiers when determining applications for complying development certificates in relation to development within the Frenchs Forest 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 Frenchs Forest 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 includes Northern Beaches Council and Sydney North 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 to 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 that consists of, or involves, development for the purpose of residential accommodation within the Frenchs Forest 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 – Frenchs Forest) Determination 2021*:

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

*A person may not apply for a construction certificate 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 that consists of, or involves, development for the purpose of residential accommodation within the Frenchs Forest 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 – Frenchs Forest) Determination 2021*:

*A special infrastructure contribution must be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) 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**

A registered certifier must impose the following condition on the grant of any application for a complying development certificate to carry out development within the Frenchs Forest Special Contributions Area if it is complying development under the Housing Code, or Low Rise Housing Diversity Code, within the meaning of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*:

*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 – Frenchs Forest) 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 residential

accommodation within the Frenchs Forest Special Contributions Area (*residential concept development application*).

- (2) A consent authority must impose the following condition on the grant of consent to a residential concept development application (other than a consent to which subclause (3) applies):

*The Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) Determination 2021 requires special infrastructure contributions to be made for development that consists of, or involves, development for the purpose of residential accommodation 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 consisting of, or involving, residential accommodation set out in a residential concept development application if the *Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) 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 – Frenchs Forest) 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 construction certificate 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 for the purpose of residential accommodation 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:

*residential accommodation* has the same meaning as it has in the *Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) Determination 2021*.

*Frenchs Forest 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*.

---

# Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) 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.

ROB STOKES, MP

Minister for Planning and Public Spaces

Dated: 7 December 2021

## 1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Frenchs Forest) 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 Frenchs Forest Special Contributions Area.

## 4 Object of Determination

The main object of this Determination is to require special infrastructure contributions to be made for the provision of infrastructure in connection with the intensification of residential development in Frenchs Forest, as generally outlined in the Northern Beaches Hospital Precinct Structure Plan, adopted by Northern Beaches Council on 1 August 2017.

## 5 Definitions

(1) In this Determination:

***Charge Area 1*** means the area identified as Charge Area 1 on the Frenchs Forest Special Contributions Areas Map.

**Charge Area 2** means the area identified as Charge Area 2 on the Frenchs Forest Special Contributions Areas Map.

**contribution rate** – see clauses 10 and 11.

**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.

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

**Frenchs Forest Special Contributions Area Map** means the map marked “Frenchs Forest Special Contributions Area Map” approved by the Minister on the making of the *Environmental Planning and Assessment Amendment (Frenchs Forest Special Contributions Area) Order 2021*.

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

**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 in the *Housing Act 2001*.

**residential accommodation** means any of the following:

- (a) attached dwellings,
- (b) dual occupancies,
- (c) dwelling houses (but not secondary dwellings),
- (d) multi dwelling housing,
- (e) residential flat buildings,
- (f) semi-detached dwellings,
- (g) a group of independent living units that is seniors housing,
- (h) shop top housing.

**residential SIC development** means development for which a special infrastructure contribution must be made under clause 6.

**Residential Use Areas Map** means the map marked “Frenchs Forest SCA Residential Use Areas Map” that is published on the NSW Planning Portal and approved by the Minister on the making of this Determination, as amended by the Planning Secretary in accordance with clause 22 from time to time.

**residential use land** means land within the Frenchs Forest Special Contributions Area of either of the following kinds:

- (a) land identified as residential use land on the Residential Use Areas Map,
- (b) land included in Schedule 3 after this Determination takes effect by an amendment to this Determination made by the Minister.

**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,
- (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) the Secretary of the Department of Communities and Justice,
- (f) a provider of specialist disability accommodation under the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
- (g) a local government authority that provides affordable housing,
- (h) a not-for-profit organisation that is a direct provider of rental housing to tenants.

**special infrastructure contribution works-in-kind agreement** – see clause 20.

**Standard Instrument** means the standard instrument for a principal local environmental plan set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*.

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

- (2) Words or expressions used in this Determination have the same meanings as they have in the Act, unless otherwise defined.
- (3) The following words or expressions have the same meanings as they have in the Standard Instrument:
  - (a) attached dwelling,
  - (b) boarding house,
  - (c) dual occupancy,
  - (d) dwelling,
  - (e) dwelling house,
  - (f) hostel,
  - (g) independent living unit,
  - (h) multi dwelling housing,
  - (i) registered community housing provider,
  - (j) residential flat building,
  - (k) secondary dwelling,
  - (l) semi-detached dwelling,
  - (m) seniors housing,

- (n) shop top housing.
- (4) 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.
- (5) 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.
- (6) The map set out in Schedule 1 shows the land within the Frenchs Forest Special Contributions Area that is residential use land at the time this Determination is made. It is included for information only.

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

- (1) Subject to this clause, a special infrastructure contribution must be made for development on land that is residential use land when development consent for the development is granted, if the development consists of, or involves, development for the purpose of residential accommodation (including as part of mixed use development).

**Note.** A special infrastructure contribution may be imposed only as a condition of development consent. 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.

- (2) A special infrastructure contribution is not required to be made for development on land to which a development application or an application for a complying development certificate relates if the development will not result in an increase in the number of dwellings on the land (whether contained in new buildings or existing buildings). Accordingly, if a single dwelling house is demolished and replaced by another single dwelling house, a special infrastructure contribution is not required.
- (3) A special infrastructure contribution is not required to be made for development for the purpose of public housing, or for the purpose of seniors housing or affordable housing carried out by or on behalf of a social housing provider.

**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 of the Act to the development.

## **7 Development that is residential SIC development in part only**

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

- (a) not only authorises development on land within the Frenchs Forest Special Contributions Area, but also authorises development on land outside the Frenchs Forest Special Contributions Area, or
- (b) not only authorises development on residential use land, but also authorises development on other land, or
- (c) also authorises development that is not residential SIC development.

**Note.** A special infrastructure contribution is required to be made for development only to the extent that the development is on residential use land and is residential SIC development. See clause 12 (3) (c) and clause 13 (4) about the calculation of the number of additional dwellings for residential SIC development where it is part of a larger development that extends beyond land identified as residential use land.

## 8 Nature of contribution

- (1) The special infrastructure contribution for residential 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 residential SIC development (being the carrying out of works for the provision of infrastructure 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 residential SIC development where:
    - (i) the contribution required to be provided under the agreement is for the provision of 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 that infrastructure, and
    - (ii) the agreement does not exclude the application of section 7.24 of the Act to the residential 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 residential 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 residential 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), if residential SIC development is authorised by a complying development certificate, the special infrastructure contribution for the development may be made only as a monetary contribution.

## 9 Amount of monetary contribution

The monetary contribution that is payable as a special infrastructure contribution for residential SIC development authorised by a development consent is the amount calculated as follows:

$\$C_p = \$C_R \times D_N$  where:

$\$C_p$  is the monetary contribution payable

$\$C_R$  is the amount in dollars of the contribution rate, applicable at the date of payment, for the residential SIC development (as provided by clauses 10 and 11)

$D_N$  is the number of additional dwellings resulting from the development authorised by the consent (as determined in accordance with clauses 12 and 13).

## 10 Contribution rates for determining monetary contribution

- (1) The contribution rates that apply, at any time before 1 July 2022, in the calculation of the monetary contribution for residential SIC development are as follows:

Charge Area in which development is to be carried out	Contribution rate
Charge Area 1	\$6,500 per additional dwelling
Charge Area 2	\$19,500 per additional dwelling

Each of the amounts of \$6,500 and \$19,500 is a *contribution amount* for the purposes of this clause and clause 11.

- (2) The contribution rate that applies at any time during the 12 month period commencing 1 July 2022, and during each subsequent 12 month period, is to be determined by adjusting each contribution amount in accordance with clause 11. Accordingly, the contribution rate for any such period is the adjusted contribution amount per additional dwelling.

## 11 Annual adjustment of contribution rates

- (1) On 1 July 2022 and on 1 July in each subsequent year, each contribution amount of \$6,500 and \$19,500, respectively, 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 an amount that is not a whole number multiple of \$1, the amount is to be rounded up to the nearest whole number multiple of \$1.

## **12 Number of additional dwellings for calculating monetary contribution**

- (1) For the purpose of calculating the amount of the monetary contribution under clause 9, the number of additional dwellings authorised by the development consent for the residential SIC development (the *relevant development consent*) is, subject to this Determination, the sum of:
  - (a) the number of dwellings that the consent authorises to be erected, including as a result of any extension or enlargement to an existing building, and
  - (b) the number of dwellings that will result from a change of use of an existing building that the consent authorises.
- (2) Any dwelling that is to be provided for public housing, or provided for seniors housing or affordable housing by or on behalf of a social housing provider, is not to be included, under subclause (1), in the number of additional dwellings authorised by the relevant development consent.
- (3) To avoid doubt, the number of additional dwellings authorised by the relevant development consent does not include:
  - (a) the number of existing dwellings on the land at the time that the relevant development consent was granted, or
  - (b) dwellings that are not residential accommodation, or
  - (c) dwellings that are not on residential use land.

**Note.** Under this clause, if development consent were granted for the erection of a dwelling on a lot where there is an existing house, so as to create a dual occupancy on that lot, the SIC would be calculated on the basis of there being only 1 additional dwelling authorised by the development consent.



### **13 Number of additional dwellings reduced by number of demolished dwellings**

- (1) The number of additional dwellings, determined in accordance with clause 12, is reduced by the number of any dwellings on the land to which the relevant development consent applies that have been, or are authorised to be, demolished:
  - (a) under the relevant development consent, and
  - (b) under any other development consent that was granted no more than 3 years before the grant of the relevant development consent.
- (2) The demolition or proposed demolition of a dwelling cannot be relied on under subclause (1) (b) to reduce the monetary contribution payable for the residential SIC development if it has been relied on previously to reduce the monetary contribution for another residential SIC development.
- (3) For the purpose of determining, under this clause, the number of dwellings that have been, or are authorised to be, demolished:
  - (a) a dwelling that is not residential accommodation is to be included in the number, and
  - (b) a boarding house and a hostel are each to be treated as a single dwelling.
- (4) To avoid doubt, dwellings on land that is not residential use land at the time the relevant development consent is granted are not to be included in the number of dwellings that have been, or are authorised to be, demolished.

### **14 Calculation of contributions if SIC development in both charge areas**

- (1) This clause applies if a single development consent for residential SIC development authorises the development on land that is partly within Charge Area 1 and partly within Charge Area 2.
- (2) The total amount of the monetary contribution for residential SIC development to which this clause applies is to be calculated by separately determining the contribution amounts for that part of the development within Charge Area 1 and that part of the development within Charge Area 2, applying the different contributions rates for each charge area in so far as it is practicable to do so. The total amount of the monetary contribution is the sum of those separately determined contribution amounts.

### **15 Final decision by Secretary of number of additional dwellings**

- (1) A developer is entitled under this Determination to a reduction in, or an exclusion from, the determination of the number of additional dwellings only if the developer establishes the matters relevant to the reduction or exclusion to the Planning Secretary's satisfaction.

- (2) In particular, if a developer is unable to establish the number of dwellings in any building that may be, or have been, demolished under a development consent to the Planning Secretary's satisfaction, the Planning Secretary may decide to treat that number as any number less than the number that the developer asserts.
- (3) The Planning Secretary may make any decision required to be made for the purpose of calculating the special infrastructure contribution for residential SIC development in accordance with this Determination and, for that purpose, may have regard to any information available at the time, including information in an application for a construction certificate or modification of a construction certificate, or for a strata certificate.

#### **16 When a monetary contribution for residential SIC development must be paid**

- (1) If a special infrastructure contribution for residential SIC development is to be made as a monetary contribution, it must be paid before any construction certificate is issued in relation to building work the subject of the relevant development consent.
- (2) However, if the development consent for the residential SIC development authorises the erection of more than one building, and a construction certificate is sought for only one or some of those buildings (a *staged residential development*), the monetary contribution may be paid progressively, with an amount being paid before the issue of each construction certificate.
- (3) The amount that must be paid before the issue of each construction certificate is to be calculated in accordance with clause 9, but on the basis that the number of additional dwellings is the number of additional dwellings that will result from the building work to which the certificate relates. Clause 12 is to be applied accordingly.
- (4) Where a developer elects to pay the monetary contribution progressively for a staged residential development, the developer may distribute the reduction in the number of dwellings calculated in accordance with clause 13 (being the number of dwellings that may be, or have been, demolished) between the amounts payable before the issue of each construction certificate.
- (5) However, the amounts paid for a staged residential development under this clause must not be less than the total monetary contribution calculated for the residential SIC development as a whole.

#### **17 When a monetary contribution for complying development must be paid**

Despite clause 16, if a complying development certificate is issued for residential 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 operative 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.

## **18 Additional contributions payable if more dwellings created by strata plan**

- (1) The purpose of this clause is to require a further monetary contribution to be paid if a development consent for residential SIC development involving strata subdivision is modified so as to increase the number of additional dwellings authorised by the development consent after a special infrastructure contribution for the residential SIC development has already been made for the development (the *initial special infrastructure contribution*).
- (2) If a proposed strata plan for residential SIC development would, on registration, create more than the number of additional dwellings on which the initial special infrastructure contribution for the development was based, a further monetary contribution must be paid. That further monetary contribution is to be calculated in accordance with clause 9, but on the basis that the number of additional dwellings (represented by  $D_N$  in the formula set out in clause 9) is the difference between the following numbers:
  - (a) the number used in calculating the initial special infrastructure contribution for the development,
  - (b) the number of additional dwellings that will be created on registration of the strata plan.
- (3) The further monetary contribution under this clause must be paid before the issue of the strata certificate for the strata plan.
- (4) In this clause, *strata plan* means a strata plan within the meaning of the *Strata Schemes Development Act 2015* and includes a strata plan of subdivision within the meaning of that Act.

## **19 Reduction of rate up to June 2023**

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.

## **20 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 residential 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 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 residential SIC development, and
  - (b) specify the time by which the land is to be, or may be, dedicated or otherwise provided, and
  - (c) specify the value of that land, or the manner in which the value 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.

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

- (1) For the purpose of section 7.23 (3A) of the Act, 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.

**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 purpose 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 by this Determination.

## **22 Identification of land in respect of which a SIC may be required**

- (1) The Planning Secretary is to amend the Residential Use Areas Map, from time to time, to identify land within the Frenchs Forest Special Contributions Area as residential use land for the purposes of this Determination.
- (2) The Planning Secretary is to amend the Residential Use Areas Map by arranging for the publication of a substitute map on the NSW Planning Portal.
- (3) Subject to this clause, the Planning Secretary is to amend the Residential Use Areas Map to identify land as residential use land if and only if an amendment is made, after the publication of this Determination in the Gazette, to the environmental planning instruments (*EPI*) applying to the land that has any of the following effects:
- (a) rezones the land from Zone R2 Low Density Residential to Zone R3 Medium Density Residential, so as to permit development (with consent) for the purpose of attached dwellings and multi dwelling housing where development for those purposes was prohibited on the land immediately before the commencement of the amendment,
  - (b) rezones the land from Zone R2 Low Density Residential to Zone B4 Mixed Use or Zone MU1 Mixed Use, so as to permit development (with consent) for the purpose of shop top housing and residential flat buildings where development for those

- purposes was prohibited on the land immediately before the commencement of the amendment,
- (c) rezones the land from Zone B2 Local Centre to Zone R3 Medium Density Residential,
  - (d) rezones the land from Zone R2 Low Density Residential so as to permit development for the purpose of shop top housing where development for that purpose was prohibited on the land immediately before the commencement of the amendment,
  - (e) provides for the following additional permitted uses on land within Zone R2 Low Density Residential where all of those uses were prohibited immediately before the commencement of the amendment: attached dwelling, dual occupancy (attached), semi-detached dwelling.
- (4) To avoid doubt, if land is not identified on the Residential Use Areas Map at the time development consent to carry out development on that land is granted, the land is not residential use land in respect of which a special infrastructure contribution may be imposed (unless it is residential use land within the meaning of paragraph (b) of the definition of that term in clause 5).
- (5) The Planning Secretary must ensure that land is identified as residential use land as soon as practicable when an amendment to an environmental planning instrument is made if the Planning Secretary is satisfied it is of a kind described in subclause (3). However, the Planning Secretary is not required to do so if Schedule 3 already includes a description of the land.
- (6) A substitute Residential Use Areas Map that is published under this clause may also show residential use land within the meaning of paragraph (b) of the definition of that term in clause 5. However, inclusion of the land is for information only, and the land is not required to be shown on that map in order for a special infrastructure contribution to be imposed for development on that land.
- (7) For the purposes of this clause, an amendment to an environmental planning instrument includes a replacement of the instrument, whether expressly or impliedly.

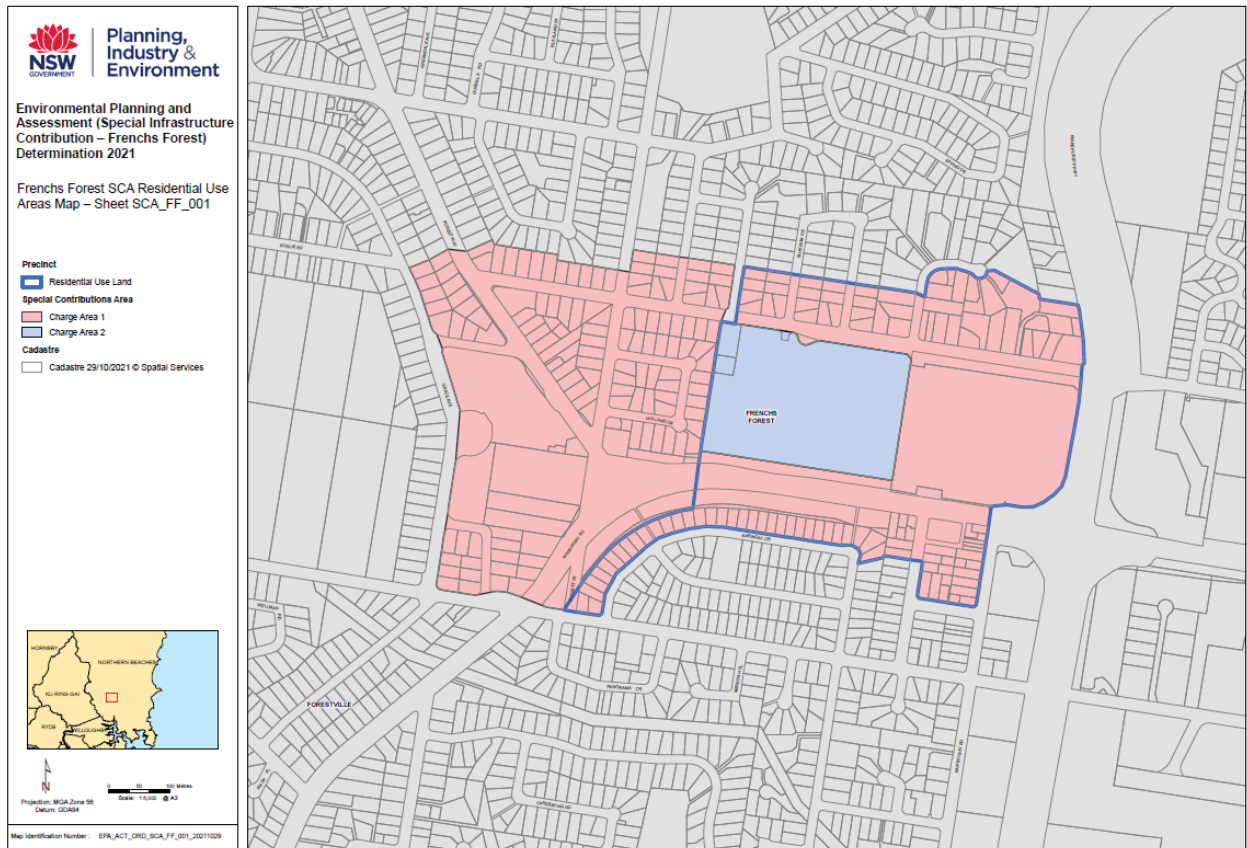
## **23 Reasons for the level and nature of special infrastructure contributions**

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 public infrastructure (described in Schedule 2) in the Frenchs Forest 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 – MAP SHOWING RESIDENTIAL USE LAND WITHIN FRENCHS FOREST SPECIAL CONTRIBUTIONS AREA ON MAKING OF DETERMINATION





## SCHEDULE 2 – LIST OF INFRASTRUCTURE

Infrastructure	Attributable cost
<b>Education</b>	<b>\$19,519,791</b>
Additional primary and secondary school facilities	\$19,519,791
<b>Roads</b>	<b>\$5,329,626</b>
R1 Forest Way additional right turn lane from southern Forest Way leg into Naree Road (land and works)	\$4,789,626
R2 Signalised intersection at Frenchs Forest West Road/Sylvia Place	\$540,000
<b>Public Transport</b>	<b>\$1,000,000</b>
Supporting infrastructure for rapid bus services via Warringah Road between Dee-Why and Chatswood (investigation)	\$1,000,000
<b>Active Transport and Green Links</b>	<b>\$10,915,608</b>
P1 Southern Gateway - new stairway access to the pedestrian bridge over Warringah Road, west of Hilmer Street	\$443,866
P2 Manly Dam Regional Connection	\$8,000,000
P3 Warringah Road Green Bridge (investigation)	\$2,471,742
<b>Planning and delivery</b>	<b>\$551,475</b>
<b>TOTAL</b>	<b>\$37,316,500</b>

**SCHEDULE 3 – ADDITIONAL RESIDENTIAL USE LAND**

(When this Determination was made this Schedule was blank)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

**Order under clause 6 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 development under clause 6 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: 28/03/2022

A handwritten signature in blue ink, appearing to read 'K T' followed by a long horizontal stroke.

Keiran Thomas

**Director, Regional Assessments**

## SCHEDULE 1

Column 1	Column 2
<b>Development</b>	<b>Land</b>
Development known as the 'Glades Estate residential subdivision (MP 06_0143)', approved by the then Minister for Planning, under section 75J of the Act on 5 March 2009 (and as subsequently modified under 75W of the Act).	All land identified by Lot and DP references in <b>Schedule 1</b> of the project approval to carry out the development known as the 'Glades Estate residential subdivision (MP 06_0143)' as in force on the date of this Order.