

# Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Aerotropolis) Determination 2022

under the

Environmental Planning and Assessment Act 1979

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



Minister for Planning

Dated: 9/3/22

## Part 1 Preliminary

### 1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Aerotropolis) Determination 2022*.

### 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 Western Sydney Aerotropolis Special Contributions Area.

### 4 Objective of Determination

The objective of this Determination is to provide for special infrastructure contributions to be made towards the provision of infrastructure in connection with the creation of Western Sydney Aerotropolis, a new economic hub centred on Western Sydney Airport.

## 5 Definitions

(1) In this Determination:

***Aerotropolis SEPP*** means *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*.

***Agribusiness Zone*** means the land use zone of that name under the Aerotropolis SEPP.

***biodiversity certified land*** has the same meaning as it has in the *Biodiversity Conservation Act 2016*.

***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.

***Enterprise Zone*** means the land use zone of that name under the Aerotropolis SEPP.

***first station precinct SIC*** – see clause 22.

***greenfield SIC development*** means development on rezoned land for which a special infrastructure contribution must be made under Part 2 only.

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

***Mamre Road Industrial Zone*** means land within IN1 General Industrial Zone, or IN2 Light Industrial Zone, under *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.

***Metro Stations Precincts Map*** means the map of that name that:

- (a) is approved by the Minister, for the purposes of this Determination, to identify station precincts, on the making of this Determination, and
- (b) is published on the NSW Planning Portal.

***Mixed Use Zone*** means the land use zone of that name under the Aerotropolis SEPP.

***NDA SIC*** means a special infrastructure contribution calculated in accordance with Division 2 of Part 2.

**percentage levy SIC** means a special infrastructure contribution calculated in accordance with Division 2 of Part 3 for station precinct SIC development only.

**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*.

**rezoned land** means land within any of the following zones:

- (a) Agribusiness Zone,
- (b) Enterprise Zone,
- (c) Mixed Use Zone,
- (d) Mamre Road Industrial Zone.

**SIC development** means greenfield SIC development and station precinct SIC development.

**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 Secretary of the Department of Communities and Justice,
- (d) the Aboriginal Housing Office constituted by the *Aboriginal Housing Act 1998*,
- (e) a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,
- (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 38.

**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*.

**station precinct** means the area of land identified as a station precinct on the Metro Stations Precincts Map, but does not include Lot 10 in Deposited Plan 1235662 within the boundary of the Aerotropolis Station Precinct as shown on that map.

**Note.** Land identified as a station precinct is land in the vicinity of two proposed Sydney Metro stations, being Aerotropolis Station and Luddenham Station.

**station precinct SIC development** means development on land within a station precinct for which a special infrastructure contribution must be made under Part 3.

*subsequent station precinct SIC* means a special infrastructure contribution required to be made under Part 3, other than a first station precinct SIC.

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

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

- (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) home business,
- (e) home occupation,
- (f) passenger transport facility,
- (g) place of public worship,
- (h) public utility undertaking,
- (i) recreation area,
- (j) registered community housing provider,
- (k) school,
- (l) seniors housing.

**Strategic biodiversity certified land**

- (4) A reference to strategic biodiversity certified land in this Determination:

- (a) is a reference only to land that has been biodiversity certified pursuant to a strategic application for biodiversity certification made by a planning authority within the meaning of Part 8 of the *Biodiversity Conservation Act 2016*, and
- (b) does not include *subject land* within the meaning of Part 7 of Schedule 7 to the *Threatened Species Conservation Act 1995*, which conferred biodiversity certification on *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* and any other environmental planning instrument that applies to the subject land, as in force from time to time.

**Note.** Clause 43 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017* preserves the operation of Part 7 of Schedule 7 to the *Threatened Species Conservation Act 1995*.

#### **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 to the index in this Determination 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.
- (8) The map showing the Western Sydney Aerotropolis Special Contributions Area that is available on the NSW legislation website and the Metro Stations Precincts Map are reproduced in Schedule 1 and Schedule 2 respectively. They are included for information only.

## **Part 2 Development for which SIC is required on rezoned land (except in station precinct)**

### **Division 1 – When is a SIC required and how it may be made**

#### **6 Application of Part to rezoned land within the SCA**

This Part applies to rezoned land within the Western Sydney Aerotropolis Special Contributions Area. However, this Part does not apply to land within a station precinct to the extent that it is also within the Mixed Use Zone or Enterprise Zone (or both).

**Note.** Part 3 applies to development within a station precinct. For the purposes of calculating the first special infrastructure contribution payable in respect of land within a station precinct, Division 2 of this Part 2 is applied to calculate a component of the contribution (called an NDA SIC).

Development on land comprising Lot 10 in Deposited Plan 1235662 in Bringelly is subject to this Part only, as the definition of *station precinct* means it is not part of a station precinct even though it is located inside the boundary of the Aerotropolis Station Precinct as shown on the Metro Stations Precincts Map.

#### **7 Development for which SIC must be made under this Part**

- (1) Subject to this Determination, a special infrastructure contribution must be made for development on land that, when development consent for the development is granted, is rezoned land within the Western Sydney Aerotropolis Special Contributions Area.

**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) roads, or other 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) roads, or other infrastructure, for which a contribution may be required to be made under this Determination or other applicable determination under section 7.23 of the Act,
  - (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 any Part of that policy),
  - (c) attached development, within the meaning of the Codes SEPP,
  - (d) detached development, within the meaning of the Codes SEPP,
  - (e) a change of use of an existing building,
  - (f) strata subdivision of an existing building,
  - (g) the demolition of a building or work,
  - (h) the carrying out of a work,
  - (i) a subdivision for the purpose only of rectifying an encroachment on any existing lot,
  - (j) development for the purpose of a home business or home occupation,
  - (k) development for the purpose of an encased automatic machine, a large reverse vending machine, an outdoor express centre or a drop-off collection point.

In this subclause, a reference to the Codes SEPP is a reference to *State Environmental Planning Policy (Exempt and Complying Codes) 2008*, and *encased automatic machine, large reverse vending machine, outdoor express centre* and *drop-off collection point* have the same meanings as they have in Division 1 of Part 5B (Container Recycling Facilities Code) of the Codes SEPP.

**Exemption if land will be further subdivided or developed**

- (4) A special infrastructure contribution is not required to be made for development comprising only subdivision if the Planning Secretary has certified in writing to the relevant consent authority or registered certifier that each lot resulting from the subdivision will be further developed (a *super lot*).

A reference in this subclause to a lot that will be further developed is a reference to a lot that will be further subdivided (other than by strata subdivision) or otherwise developed in accordance with another development consent, including a future development consent, for a purpose permitted under the applicable Land Use Table in the Aerotropolis SEPP or under Schedule 1 to that SEPP, or in the case of land in Mamre Road Industrial Zone, for a purpose permitted on that land under *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.

**No further contribution required**

- (5) If a special infrastructure contribution has been made for development on land in accordance with this Part or the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*, 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.
- (6) If a contribution has been made (whether before or after this Determination takes effect) under a planning agreement for development, 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 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 subject of the planning agreement. The effect of the above subclause (6) 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.

**Previous exclusion from NDA does not exempt further development**

- (7) To avoid doubt, if a particular area of land (for example, land that is transport corridor land or a super lot) has been previously excluded from the calculation of the net developable area under this Part or under the *Environmental Planning and Assessment*

*(Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* for a SIC development, or under a planning agreement, other development that may be proposed for that area is not exempt from the requirement to make a special infrastructure contribution under subclause (5) or (6) merely because a contribution has been previously made under a development consent, or planning agreement, 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 special infrastructure contribution may be payable for development on that area.

- (8) An exclusion from the requirement to make a special infrastructure contribution provided by this clause is not an exclusion from a requirement to make a special infrastructure contribution under Part 3.
- (9) 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.

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

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

- (a) also authorises development on land outside the Western Sydney Aerotropolis Special Contributions Area or on land that is not rezoned 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 rezoned land within the special contributions area and is also SIC development. See clause 14 (7) about the calculation of the net developable area for greenfield SIC development where it is part of a larger development.

#### **9 Nature of contribution**

- (1) The special infrastructure contribution for greenfield 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 greenfield 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 SIC greenfield 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 3 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 development, and
  - (iii) the agreement provides that an obligation to make a special infrastructure contribution imposed by a condition of development consent for the development in accordance with this Determination (or other determination under section 7.23 of the Act that applies to the land on which the development may be carried out) may be met (wholly or partly) by the provision of the contribution under the planning agreement.
- (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 greenfield SIC development is on land that is strategic biodiversity certified land when development consent for that development is granted:
- (a) in the case of development on land within the Agribusiness Zone, Enterprise Zone or Mamre Road Industrial Zone – 36% of the amount of the special infrastructure contribution for the development, as calculated in accordance with Division 2, is to be made as a monetary contribution, and
  - (b) in the case of development on land within the Mixed Use Zone – 14% of the amount of the special infrastructure contribution for the development, as calculated in accordance with Division 2, is to be made as a monetary contribution.

**Note.** 36% and 14% of the special infrastructure contributions required to be made as monetary contributions, as set out above, represent about half the cost of conservation measures to be funded by the contributions to offset the impacts on biodiversity values of the clearing of native vegetation and the loss of habitat on strategic biodiversity certified land within the Western Sydney Aerotropolis Special Contributions Area. Conservation measures proposed to be funded by special infrastructure contributions are referred to in Schedule 3 as “Biodiversity Offset - Cumberland Plain Conservation Plan”.

## **Division 2 – Calculation of the amount of the contribution**

### **10 Amount of monetary contribution**

The amount of the monetary contribution that is payable as a special infrastructure contribution for greenfield SIC development (being an NDA SIC) 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:

$$\text{\$C}_P = \text{NDA} \times \text{\$C}_R$$

where:

$\text{\$C}_P$  is the monetary contribution payable

- NDA** is the net developable area, in hectares, for the development (determined in accordance with clauses 14 and 15)
- \$C<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 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 greenfield SIC development are as follows:

Land use zone in which development is to be carried out	Contribution rate
Agribusiness Zone	\$200,000 per hectare of net developable area
Enterprise Zone	\$200,000 per hectare of net developable area
Mixed Use Zone	\$500,000 per hectare of net developable area
Mamre Road Industrial Zone	\$200,000 per hectare of net developable area

Each of the amounts of \$200,000 and \$500,000 is a *contribution amount* for the purposes of this clause and clause 12.

- (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 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 rates**

- (1) On 1 July 2022, 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 Reduction in contribution rate if biodiversity certification not conferred**

- (1) This clause applies to a greenfield SIC development on land that is not strategic biodiversity certified land when development consent for the development is granted.
- (2) The amount of the monetary contribution that would otherwise be payable for the greenfield SIC development is reduced by:
  - (a) in the case of development on land within the Agribusiness Zone, Enterprise Zone or Mamre Road Industrial Zone – 72%, and
  - (b) in the case of development on land within the Mixed Use Zone – 29%.
- (3) To avoid doubt, the monetary contribution for the greenfield SIC development is to be reduced under subclause (2) only in relation to that part of the land to which the development consent applies that is not strategic biodiversity certified land.

**Note.** 72% and 29% of the monetary contributions payable represent the proportions of the special infrastructure contributions that are for the costs of conservation measures that will be required to be implemented if biodiversity certification in connection with the Cumberland Plain Conservation Plan is conferred on land within the Western Sydney Aerotropolis Special Contributions Area.

Some land in the Western Sydney Aerotropolis Special Contributions Area, although able to be developed for urban purposes such as industrial purposes, may not be biodiversity certified even if certification is conferred on other "urban capable" land within the special contributions area. In that case, development on the land may still be required to retire biodiversity credits under the conditions of the relevant development consent if the development has an impact on biodiversity values.

**14 Net developable area**

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

**Exclusion of certain areas from NDA**

- (2) The following areas are not to be included in the calculation of the net developable area for a greenfield SIC development:
  - (a) the area of any existing road at the time development consent for the development is granted,
  - (b) the area by which any existing road is to be widened if the development consent for the development authorises, or requires, the road widening to be carried out,

- (c) any area of land that is at or below the flood planning level (within the meaning of clause 26 of the Aerotropolis SEPP) if the Planning Secretary is satisfied that the area is unsuitable for the 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 greenfield SIC development,
 if the Planning Secretary is satisfied that the area is unsuitable for the development because it is within 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 development because of the easement,
- (g) any area of land that is transport corridor land (within the meaning of clause 29 of the Aerotropolis SEPP), if the Planning Secretary is satisfied that the area is unsuitable for the development because of its being transport corridor land.

**Note.** The area of proposed new roads, internal to a development (such as a subdivision) is to be included in the calculation of the net developable area, unless they are roads to be funded by contributions, including local contributions (see subclause (4)).

- (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 the Aerotropolis SEPP or other applicable environmental planning instrument (apart from environmental protection works or minor works), rather than whether it is unsuitable for subdivision.

**Exclusion from NDA of areas to be used for public purpose**

- (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 that 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) roads, or other 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) roads, or other infrastructure, for which a contribution may be required to be made under this Determination or other applicable determination under section 7.23 of the Act,
- (o) public housing,
- (p) seniors housing or affordable housing, if provided by or on behalf of a social housing provider.

**Exclusion of lots that will be further subdivided or developed**

- (5) If the Planning Secretary is of the opinion, having regard to planning controls, that a proposed lot in a greenfield SIC development will be further developed, the area of the lot (a *super lot*) is not to be included in the calculation of the net developable area for the development.

A reference in this subclause to a proposed lot that will be further developed is a reference to a proposed lot that will be further subdivided (other than by strata subdivision) or otherwise developed in accordance with another development consent, including a future development consent, for a purpose permitted under the applicable Land Use Table in the Aerotropolis SEPP or under Schedule 1 to that SEPP, or, in the case of land in Mamre Road Industrial Zone, for a purpose permitted on that land under *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.

**Reasonable estimate is sufficient**

- (6) 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 boundaries of the rezoned land are irregular or for any other reason, such as that affordable housing is to be provided in only part of a proposed building.
- (7) To avoid doubt, the net developable area for greenfield SIC development does not include the area of any land to which the relevant development consent applies that is not within the Western Sydney Aerotropolis Special Contributions Area or is not rezoned land.
- (8) 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*.

## **15 Reduction of net developable area**

- (1) This clause applies to greenfield 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 became rezoned land. Any such lot is a *lot with a dwelling* for the purposes of this clause, unless the erection of an additional dwelling, or the demolition of the existing dwelling, on the lot is permitted under a development consent.
- (2) The net developable area of the greenfield SIC development does not include the area of any lot with a dwelling if that area is no more than 0.1 hectare.
- (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 greenfield SIC development is taken to be reduced by 0.1 hectare for the purpose of calculating the net developable area of the development.
- (4) An exclusion of an area from the calculation of the net developable area of the greenfield SIC development is not affected by this clause. However, for the purpose of applying clause 14, the area of any lot with a dwelling that is more than 0.1 hectare is the actual area in hectares of that proposed lot. Only if the net developable area, as calculated applying clause 14, is more than 0.1 hectare is it taken to be reduced by 0.1 hectare under this clause.

## **16 Calculation of contributions if SIC development spans different zones**

- (1) This clause applies if a single development consent for greenfield SIC development authorises the development that is within more than one land use zone and different contribution rates apply to the applicable land use zones.
- (2) The total amount of the monetary contribution for greenfield SIC development to which this clause applies is to be calculated by separately determining the contribution amounts payable under this Determination for each part of the development on land within each of the land use zones concerned, 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.

## **17 Final decision regarding NDA to be made 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 greenfield 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.

## Part 3 Development for which SIC is required in station precinct

### Division 1 - When is a SIC required and how it may be made

#### 18 Purpose and application of Part to land in station precinct within the SCA

- (1) The purpose of this Part is to require development in the Mixed Use Zone and the Enterprise Zone, in the general vicinity of a proposed Metro station, to make a contribution to the cost of the Sydney Metro – Western Sydney Airport Project, based on a percentage of the cost of the development, in addition to a contribution to other infrastructure determined in accordance with Division 2 of Part 2.
- (2) This Part applies only to land within the Mixed Use Zone or the Enterprise Zone (or both) in a station precinct within the Western Sydney Aerotropolis Special Contributions Area.

#### 19 Development for which SIC must be made

- (1) Subject to this Part, a special infrastructure contribution must be made for development on land that, when development consent for the development is granted, is land within the Mixed Use Zone or Enterprise Zone (or both) and within a station precinct of the Western Sydney Aerotropolis Special Contributions Area.

##### Types of development exempt from SIC

- (2) A special infrastructure contribution is not required to be made for development that is for any of the following purposes:
  - (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) roads, or other 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) roads, or other infrastructure, for which a contribution may be required to be made under this Determination or other applicable determination under section 7.23 of the Act,

- (o) public housing,
- (p) seniors housing or affordable housing, if carried out by or on behalf of a social housing provider.

For the purposes of this Part, a purpose set out above is a *designated community purpose*.

- (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 any Part of that policy),
  - (c) attached development, within the meaning of the Codes SEPP,
  - (d) detached development, within the meaning of the Codes SEPP,
  - (e) a change of use of an existing building,
  - (f) strata subdivision of an existing building,
  - (g) the demolition of a building or work,
  - (h) the carrying out of a work,
  - (i) a subdivision for the purpose only of rectifying an encroachment on any existing lot,
  - (j) development for the purpose of a home business or home occupation,
  - (k) development for the purpose of an encased automatic machine, a large reverse vending machine, an outdoor express centre or a drop-off collection point.

In this subclause, a reference to the Codes SEPP is a reference to *State Environmental Planning Policy (Exempt and Complying Codes) 2008*, and *encased automatic machine*, *large reverse vending machine*, *outdoor express centre* and *drop-off collection point* have the same meanings as they have in Division 1 of Part 5B (Container Recycling Facilities Code) of the Codes SEPP.

**Exemption if land will be further subdivided or developed**

- (4) A special infrastructure contribution is not required to be made for development comprising only subdivision if the Planning Secretary has certified in writing to the relevant consent authority or registered certifier that each lot resulting from the subdivision will be further developed (a *super lot*).

A reference in this subclause to a lot that will be further developed is a reference to a lot that will be further subdivided (other than by strata subdivision) or otherwise developed in accordance with another development consent, including a future development consent, for a purpose permitted on the land concerned under the applicable Land Use Table in the Aerotropolis SEPP or under Schedule 1 to that SEPP.

**Where contribution previously made under a planning agreement**

- (5) If a contribution has been made (whether before or after this Determination takes effect) under a planning agreement for development, then, for the purposes of this Part:



- (a) the contribution is to be treated as a first station precinct SIC (even if the application of section 7.24 to the development is excluded) in relation to the land to which the planning agreement applies, and
- (b) a reference, in relation to a first station precinct SIC, to development consent under which a contribution has been made includes a reference to the planning agreement.

Accordingly, a special infrastructure contribution (being one that includes an NDA SIC) is not required to be made in accordance with clause 22 for further development on that land.

- (6) To avoid doubt, a percentage levy SIC may be required to be made under this Part for further development (being development to which the planning agreement does not apply), on the land concerned, as provided for in clause 23.

**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 subject of the planning agreement. Subclause (5) above further provides that that the contribution under the planning agreement is to be treated as a first station precinct SIC under this Part, so that development not covered by the agreement is not required to make a special infrastructure contribution that includes both an NDA SIC and a percentage levy SIC as provided for in clause 22. However, subclause (6) makes it clear that a percentage levy SIC in accordance with clause 23 may be required in respect of that development.

- (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.

## **20 Development that is station precinct SIC development in part only**

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

- (a) also authorises development on land outside the Western Sydney Aerotropolis Special Contributions Area, or
- (b) also authorises development on land that is not within a station precinct or is not on land within the Mixed Use Zone or the Enterprise Zone.

**Note.** A special infrastructure contribution under this Part is required to be made only to the extent that the development authorised by the development consent is on land within the Mixed Use Zone or Enterprise Zone and within a station precinct. See clause 27 for the calculation of the cost of carrying out the station precinct SIC development where the relevant development consent also authorises other development.

## 21 Nature of contribution

- (1) Subject to this clause, the special infrastructure contribution for station precinct 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 station precinct 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 station precinct 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 3 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 station precinct 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 station precinct 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 station precinct SIC development may be carried out) may be met (wholly or partly) by the provision of the contribution under the planning agreement.
- (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) A percentage levy SIC (whether paid as part of a first station precinct SIC or subsequent station precinct SIC) is to be made as a monetary contribution.
- (4) If station precinct SIC development is on land that is strategic biodiversity certified land when development consent for that development is granted:
  - (a) in the case of development on land within the Enterprise Zone – 36% of the amount of the NDA SIC (made as part of the first station precinct SIC) for the development is to be made as a monetary contribution, and
  - (b) in the case of development on land within the Mixed Use Zone – 14% of the amount of the NDA SIC (made as part of the first station precinct SIC) for the development is to be made as a monetary contribution.

## Division 2 – Calculation of the amount of the contribution for station precinct development

### 22 Amount of monetary contribution payable as first station precinct SIC

- (1) This clause applies to the determination of the monetary contribution that is payable for station precinct SIC development where no special infrastructure contribution has been made previously, whether under this Determination or under the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*, in relation to the land to which the development consent for the station precinct SIC development applies (the *first station precinct SIC*).
- (2) The monetary contribution that is payable as the first station precinct SIC is the sum of the following amounts:
  - (a) an amount calculated in accordance with Division 2 of Part 2 (being an NDA SIC) as if the development were greenfield SIC development,
  - (b) an amount calculated in accordance with this Part (being a percentage levy SIC).
- (3) If a special infrastructure contribution has been previously made in relation to part only of the land to which development consent for a station precinct SIC development applies, this clause applies to the calculation of the monetary contribution payable for the development to the extent that the consent applies to the other part of the land for which no special infrastructure contribution has yet been made.
- (4) To avoid doubt, if a particular area of land (for example, land that is transport corridor land or a super lot) has been previously excluded from the determination of the net developable area in calculating the first station precinct SIC (or a contribution under the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*) for a station precinct development, other development proposed for that area is not exempt from the requirement to make a first station precinct SIC merely because a contribution has previously been 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 first station precinct SIC, being a special infrastructure contribution that includes an NDA SIC, may be payable for station precinct SIC development on that area.

**Note.** Under clause 19 (5), a contribution under a planning agreement is to be treated as a first station precinct SIC. Accordingly, if that contribution has been based on the net developable area of the development concerned, and a particular area has been excluded from the calculation of the net developable area, then a first station precinct SIC may still be payable for later development on that excluded area, as set out in subclause (4) above.

**23 Amount of monetary contribution payable as subsequent station precinct SIC**

- (1) This clause applies if a first station precinct SIC (or contribution under the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*) has been made under a development consent for development on land in respect of which a further development consent is granted for the carrying out of station precinct SIC development (a *subsequent station precinct SIC development*).
- (2) The monetary contribution that is payable for a subsequent station precinct SIC development is a percentage levy SIC only, calculated in accordance with this Part.
- (3) To avoid doubt, a percentage levy SIC may be payable for more than one subsequent station precinct SIC development on the same land.

**24 No percentage levy payable if development cost is not more than \$200,000**

A percentage levy SIC is required to be made for station precinct SIC development only if the proposed cost of carrying out the development (determined in accordance with this Part) is more than \$200,000.

**25 Amount of monetary contribution payable as percentage levy**

- (1) The monetary contribution that is payable as a percentage levy SIC for station precinct SIC development is:
  - (a) for development within the Mixed Use Zone – 2% of the proposed cost of carrying out that development, and
  - (b) for development within the Enterprise Zone – 1% of the proposed cost of carrying out that development.
- (2) If a station precinct SIC development to which a single development consent applies is to be carried out in both the Mixed Use Zone and the Enterprise Zone, and it is practicable to separately determine the proposed costs of carrying out each part of the development in each zone, those costs are to be so determined, and the percentage levy SICs for each part are also to be separately calculated. The percentage levy SIC for the whole of the station precinct SIC development is then the sum of the two amounts obtained.
- (3) If it is not practicable to separately determine the proposed costs of the station precinct SIC development in each zone as described in subclause (2), the percentage levy SIC for the development is an amount calculated as follows:

$$\text{\$L} = \text{cost of development} \times \left( 2\% \times \frac{\text{NDA Mixed Use}}{\text{Total NDA}} + 1\% \times \frac{\text{NDA enterprise}}{\text{Total NDA}} \right)$$

where:

<b>\$L</b>	is the percentage levy SIC payable
<b>cost of development</b>	is the proposed cost of carrying out the station precinct SIC development determined in accordance with this Part
<b>NDA Mixed Use</b>	is the net developable area, in hectares, of that part of the station precinct SIC development to be carried out in the Mixed Use Zone
<b>NDA Enterprise</b>	is the net developable area, in hectares, of that part of the station precinct SIC development to be carried out in the Enterprise Zone
<b>Total NDA</b>	is the sum of NDA Mixed Use and NDA Enterprise

- (4) For the purpose of subclause (3), the net developable areas of the parts of the station precinct SIC development in the Mixed Use Zone and Enterprise Zone, respectively, are to be determined in accordance with Division 2 of Part 2.

## **26 Determination of the cost of carrying out development**

- (1) The proposed cost of carrying out station precinct SIC development is to be determined by the Planning Secretary, for the purpose of calculating the percentage SIC levy, by adding up all the costs that have been, or are to be, incurred in carrying out the development, including the following:
- (a) if the development involves the erection of a building or the carrying out of engineering or construction work – the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,
  - (b) if the development involves a change of use of land – the costs of or incidental to doing anything necessary to enable the use of the land to be changed,
  - (c) if the development involves the subdivision of land – the costs of or incidental to preparing, executing and registering the plan of subdivision (including strata plan) and any related covenants, easements or other rights.
- (2) The following costs are not to be included in any determination of the proposed cost of carrying out the station precinct SIC development:
- (a) the cost of the land on which the development is to be carried out,
  - (b) the costs of any repairs to any building or works on that land that are to be retained in connection with the development,
  - (c) the costs associated with marketing or financing the development (including interest on loans),
  - (d) the costs associated with legal work carried out or to be carried out in connection with the development,
  - (e) project management costs associated with the development,
  - (f) the cost of building insurance in respect of the development,

- (g) the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),
- (h) the costs of commercial stock inventory,
- (i) any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law,
- (j) the costs of enabling access by disabled persons in respect of the development,
- (k) the costs of energy and water efficiency measures associated with the development,
- (l) the costs of any development that is the adaptive reuse of a heritage item,
- (m) the costs of any development that is for a designated community purpose.

**Note.** The costs that are to be included or excluded under this clause in calculating the costs of carrying out the development concerned reflect the requirements of clause 25J of the *Environmental Planning and Assessment Regulation 2000*, as in force when this Determination commenced, in relation to the calculation of a levy under section 7.12 of the *Environmental Planning and Assessment Act 1979*. However, subclause (2) (m) provides, in addition, for the exclusion of the costs of development for a designated community purpose.

- (3) To avoid doubt, the cost of carrying out station precinct SIC development does not include the cost of carrying out any other development to which the relevant development consent applies on land that is not within the station precinct or is not within the Mixed Use Zone or Enterprise Zone.

**27 Calculation of percentage levy payable where development extends beyond station precinct or beyond Mixed Use Zone or Enterprise Zone**

- (1) This clause applies if a development consent authorises the carrying out of development that is only partly station precinct SIC development (such as where a consent authorises the erection of a single building that will be located on a parcel of land that lies both within the boundary of the precinct and outside it) (a *composite development consent*).
- (2) If it is practicable to separately determine the proposed cost of carrying out the station precinct SIC development, being the development on that part of the land to which the composite development consent applies that is within the Mixed Use Zone or Enterprise Zone (or both) and within the station precinct, the proposed cost is to be so determined.
- (3) If it is not practicable to separately determine the proposed cost of carrying out the station precinct SIC development subject to a composite development consent in order to calculate the percentage levy SIC payable for that development, then the following steps are to be followed:
  - (a) first, the cost of carrying out the whole of the development subject to the consent is to be determined in accordance with this Part, as if the whole development were station precinct SIC development,
  - (b) secondly, that cost is to be reduced by multiplying it by the following fraction:

$$\frac{\textit{NDA precinct land}}{\textit{Total NDA}}$$

where:

**NDA precinct land** is the net developable area, in hectares, of that part of the land within the Mixed Use Zone or Enterprise Zone (or both) in the station precinct to which the composite development consent applies

**Total NDA** is the net developable area, in hectares, of the whole of the land to which the composite development consent applies

- (c) thirdly, the cost of carrying out development as reduced in accordance with paragraph (b) is to be the cost for the purposes of calculating the percentage levy SIC in accordance with clause 25, including in the case of clause 25 (3), using that cost in the formula set out in the subclause.
- (4) For the purpose of subclause (3) (b), a net developable area is to be determined in accordance with Division 2 of Part 2.

## **28 Reduction in costs if mixed use building**

- (1) This clause applies to station precinct SIC development if the relevant development consent authorises the use of part of a building for one or more designated community purposes (such as affordable housing or a TAFE establishment) and the remainder of the building for other purposes.
- (2) The determination of the proposed cost of carrying out the station precinct SIC development may be made without excluding the costs of the development for the designated community purposes (as referred to in clause 26 (2) (m)). In that case, the cost, as otherwise determined in accordance with clause 26, is to be reduced by an amount calculated by multiplying that cost by the following:

$$\frac{\textit{gross floor area of building for designated community purpose}}{\textit{gross floor area of building}}$$

- (3) For the purposes of this clause, *gross floor area* has the same meaning as it has in the Standard Instrument.

## **29 Estimate to be verified by suitably qualified person**

- (1) To assist the Planning Secretary to determine the proposed cost of carrying out a station precinct SIC development under clauses 26, 27 and 28, the developer is to provide the Planning Secretary with an up-to-date estimate of the proposed cost that is prepared or verified:
- (a) by a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors or the Royal Institution of Chartered Surveyors and not connected to the developer, or

- (b) where the estimate of the proposed cost is less than \$3,000,000 – by a person registered as an architect in accordance with the *Architects Act 2003*, or a person accredited as a building designer by the Building Designers Association of Australia, and not connected to the developer.
- (2) If the development consent for the station precinct SIC development is modified after the Planning Secretary has last determined the proposed cost of carrying out the station precinct SIC development, the developer is to provide the Planning Secretary with a revised up-to-date estimate of the proposed cost in accordance with subclause (1).

### 30 Adjustment of the cost of carrying out development

- (1) The proposed cost of carrying out station precinct SIC development, as determined by the Planning Secretary in accordance with clauses 26, 27 and 28, is to be adjusted at the time that the contribution is made for the SIC development, by applying the following formula:

$$A = C \times \frac{\textit{latest CPI number}}{\textit{base CPI number}}$$

where:

**A** is the adjusted proposed cost of carrying out the station precinct SIC development, and

**C** is the proposed cost of carrying out the station precinct SIC development as last determined by the Planning Secretary (including under clause 27).

*latest CPI number* is the CPI number for the quarter immediately preceding the quarter in which the special infrastructure contribution is to be made, or if that number has not been published by the Australian Bureau of Statistics, the last CPI number for a quarter that has been published.

*base CPI number* is the CPI number for the quarter in which the Planning Secretary last determined the proposed cost of carrying out the station precinct SIC development.

- (2) No adjustment of the proposed cost of carrying out station precinct SIC development is to be made if:
- (a) the contribution for the development is paid in the same quarter as the Planning Secretary's determination of the cost, or
  - (b) the base CPI number has not yet been published by the Australian Bureau of Statistics, or
  - (c) the adjustment would result in a decrease in the proposed cost of carrying out the development.



### **31 Final decision to be made by Planning Secretary**

- (1) A developer is entitled under this Part to an exclusion of certain costs from the determination of the proposed cost of carrying out station precinct SIC development only if the developer establishes the matters relevant to the exclusion to the Planning Secretary's satisfaction.
- (2) The Planning Secretary may make any decision required to be made for the purpose of calculating the special infrastructure contribution for station precinct SIC development in accordance with this Part and, for that purpose, may have regard to any information available at the time.

## **Part 4 General provisions**

### **Division 1 – Timing for paying contributions**

#### **32 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.

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

- (1) This clause applies to the payment of a monetary contribution for greenfield SIC development, and to the payment of the first station precinct SIC for station precinct SIC development, where the development consists of the subdivision of land (including subdivision work but not strata subdivision) (a *SIC surface subdivision*). This clause:

- (a) applies even if the development consent for the SIC development also authorises the demolition of existing buildings or works, or the carrying out of a work, but
  - (b) does not apply where a complying development certificate authorises the development.
- (2) Despite clause 32, 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.

- (4) Despite subclause (2), any percentage levy SIC that is payable as part of the first station precinct SIC for station precinct SIC development must be paid in full before the issue of the first subdivision certificate for the staged subdivision.

### **34 Payment of monetary contribution for SIC development 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 or more 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 32, 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 33), 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.

## **Division 2 – Miscellaneous**

### **35 Calculation of contributions if development is on rezoned land both within a station precinct and outside it**

- (1) This clause applies if:
  - (a) a single development consent authorises development on both rezoned land outside a station precinct and land within the Mixed Use Zone or Enterprise Zone in a station precinct, and
  - (b) a special infrastructure contribution is required for the development both in so far as it is to be carried out on rezoned land outside the station precinct and in so far as it is to be carried out on the land in the station precinct.
- (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 amounts payable under this Determination for that part of the development on land outside the station precinct and that part of the development on land within the station precinct, respectively, 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.

**Note.** This clause is to be read in conjunction with clause 27 (3), which provides for the calculation of a percentage levy SIC for station precinct SIC development if it is not practicable to separately calculate the cost of carrying out the station precinct SIC development subject to a composite development consent as described in that clause.

### **36 Land within both South West Growth Centre and Aerotropolis**

- (1) This clause applies to land that is within both the South West Growth Centre to which the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western*

*Sydney Growth Areas) Determination 2011 (the 2011 Determination) applies and the Western Sydney Aerotropolis Special Contributions Area (overlapping land).*

**No SIC under 2011 Determination required**

- (2) A special infrastructure contribution is not required under the 2011 Determination for development on overlapping land, despite the provisions of that Determination.

**Contribution rates where SIC is required under this Determination**

- (3) If a special infrastructure contribution is required to be made under this Determination for development on overlapping land, the contribution rates for an NDA SIC under Part 2 (including as applied by Part 3) of this Determination that apply to the calculation of the monetary contribution for the development, at any time before 1 July 2022, are as follows:

Land use zone in which development is to be carried out	Contribution rate
Agribusiness Zone	\$93,175 per hectare of net developable area
Enterprise Zone	\$93,175 per hectare of net developable area
Mixed Use Zone	\$393,175 per hectare of net developable area

- (4) Each of the amounts set out in the table to subclause (2) is a contribution amount, and clause 11 (2) and clause 12 are to be applied accordingly to determine the applicable contribution rate in any 12 month period, from 1 July 2022.

**Exemption under 2011 Determination not available**

- (5) An exemption under the 2011 Determination from the requirement for a special infrastructure contribution cannot be relied on for the purposes of this Determination. In particular, a percentage levy SIC may be required to be made under this Determination, despite clause 5 (3) of the 2011 Determination, and a special infrastructure contribution may be required to be made under this Determination for development for which a complying development certificate is issued.

**Transitional provision**

- (6) To avoid doubt, this clause does not affect the operation of a development consent granted in the South West Growth Centre before this Determination came into effect. Accordingly, a special infrastructure contribution required to be made under a condition of such a consent is to be determined in accordance with that Determination as in force when the consent was granted.

- (7) In this clause, *South West Growth Centre* has the same meaning as it has in *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

**Note.** Some parts of the South West Growth Centre to which the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* applies have been rezoned under *State Environmental Planning Policy (Western Sydney Aerotropolis)*

2020, but some parts remain in a rural zone. In the absence of the above clause, the effect of the provisions of the 2011 Determination would be that, irrespective of whether land in the South West Growth Centre that is also within Western Sydney Aerotropolis Special Contributions Area had been rezoned under the Aerotropolis SEPP, a contribution could have been required for development on that land under the 2011 Determination.

The effect of clause 36 above is that a contribution is required for development on the “overlapping land” only if this Determination requires it. A contribution is not also payable under the 2011 Determination.

The contribution rates set out in subclause (3) are based on the contribution rates payable under this Determination for development that is not on strategic biodiversity certified land, as defined in this Determination, and an amount that reflects the costs of biodiversity offsets under the 2011 Determination required by the certification conferred under the *Threatened Species Conservation Act 1995* (now repealed).

### **37 Reduction of rate for first 2 years**

- (1) If a special infrastructure contribution for SIC development is made as a monetary contribution:
  - (a) at any time before 1 July 2023 – the amount that would otherwise be payable is reduced by one half, and
  - (b) at any time between 1 July 2023 and 30 June 2024 – the amount that would otherwise be payable is reduced by one quarter.
- (2) This clause does not apply to a special infrastructure contribution that is required for development on overlapping land within the meaning of clause 36.

### **38 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 3, 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 the 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 3 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.

### **39 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 and Environment.

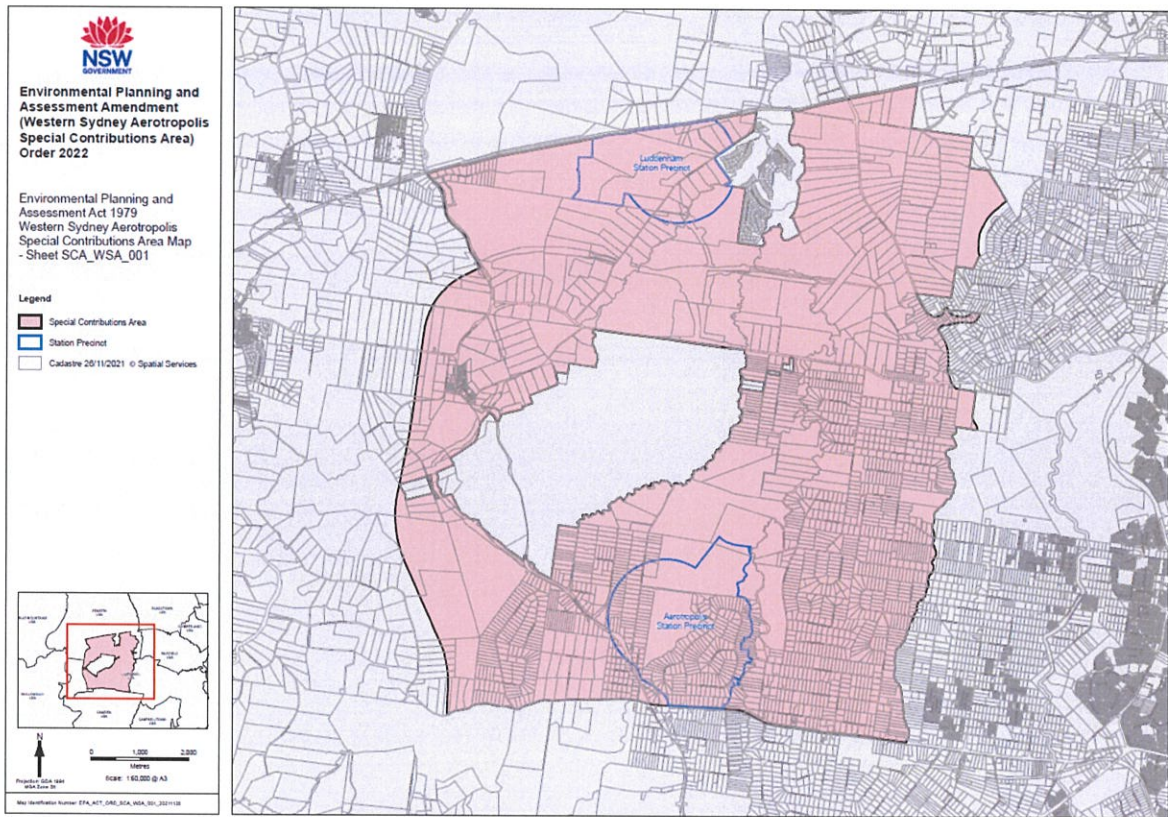
- (2) For the purposes of section 7.32 (6) of the Act, affordable housing is not a class of infrastructure for which special infrastructure contributions are required to be made under this Determination.

**40 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:

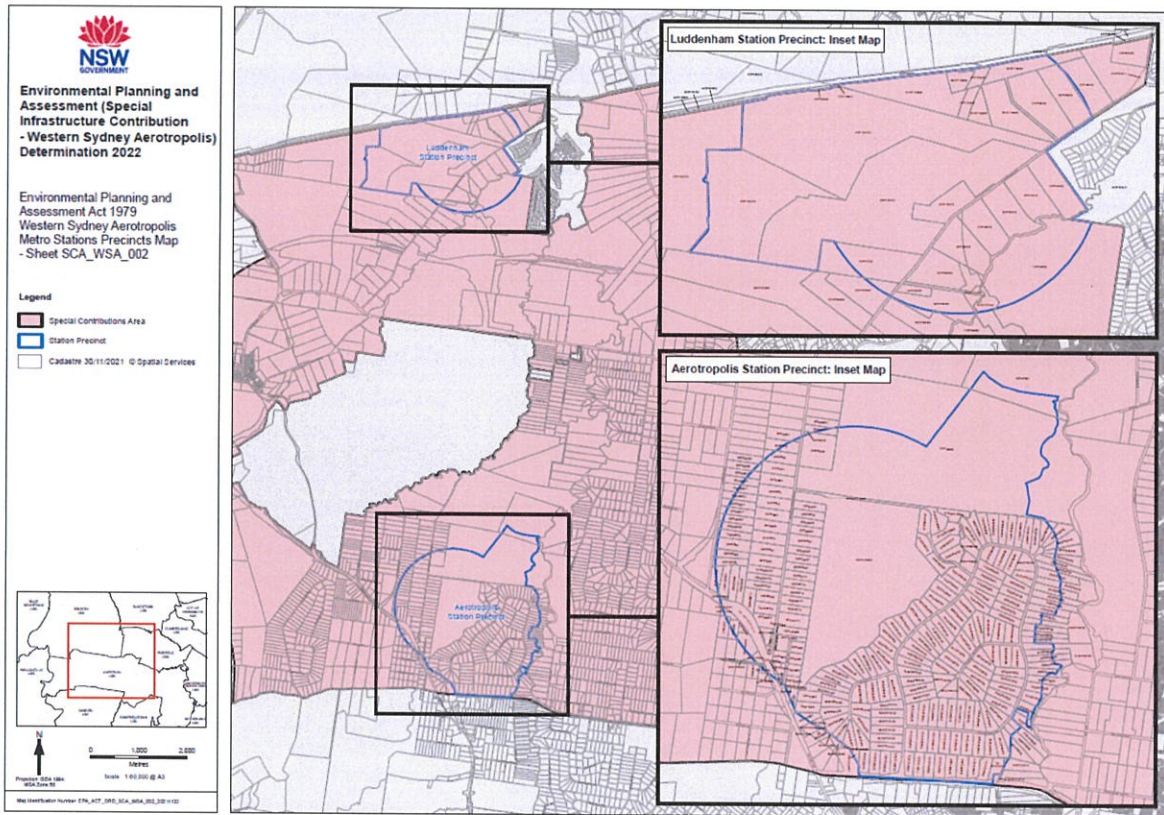
- (a) to assist in providing adequate funding for regional public infrastructure (described in Schedule 3) in the Western Sydney Aerotropolis Special Contributions Area, including conservation measures under biodiversity certification of certain land within the area pursuant to a strategic application under Part 8 of the *Biodiversity Conservation Act 2016*,
  - (b) to provide that development that benefits from the provision of the Sydney Metro bears a reasonable share of the cost of its delivery,
  - (c) to ensure that future development bears a share of the cost of the provision of regional public infrastructure,
  - (d) 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,
  - (e) to provide flexibility as to the manner in which special infrastructure contributions may be made,
  - (f) to ensure that special infrastructure contributions reflect a reasonable apportionment between the demand for infrastructure generated by both existing development within the Western Sydney Aerotropolis Special Contributions Area and development outside that area, and the demand for that infrastructure that is likely to be generated by new development for which contributions must be paid,
  - (g) to ensure that the level of special infrastructure contributions does not adversely affect housing supply, commercial development or the economic viability of new development.
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# SCHEDULE 1 – WESTERN SYDNEY AEROTROPOLIS SCA





## SCHEDULE 2 – METRO STATIONS PRECINCTS MAP



**SCHEDULE 3 – LIST OF INFRASTRUCTURE**

<b>Infrastructure item</b>	<b>100% Attributable Cost</b>	<b>Cost Apportioned to Future Development</b>
<b>Transport</b>		
<b>State and Regional Roads</b>		
Badgerys Creek Road Upgrade including Footpaths and Cycleways	\$43,000,000	\$11,280,093
Littlefields Road Extension including Footpaths and Cycleways	\$160,000,000	\$23,859,356
Luddenham Road Upgrade	\$137,000,000	\$15,116,928
New Regional Road, Badgerys Creek Road to Eastern Ring Road including Footpaths and Cycleways	\$94,000,000	\$24,940,500
New Regional Road, Devonshire Road to Eastern Ring Road including Footpaths and Cycleways	\$197,000,000	\$49,859,226
Pitt Street Upgrade and Extension including Footpaths and Cycleways	\$97,000,000	\$24,834,459
Tenth Avenue Upgrade including Footpaths and Cycleways	\$129,000,000	\$9,346,201
Western Road Upgrade and Realignment including Footpaths and Cycleways	\$90,000,000	\$21,994,319
Devonshire Road Upgrade and Realignment including Footpaths and Cycleways	\$822,000,000	\$164,650,592
Eastern Ring Road Upgrade including Footpaths and Cycleways	\$517,000,000	\$82,251,725
Elizabeth Drive Upgrade (TNR to M7) including Footpaths and Cycleways	\$1,226,000,000	\$266,954,709
Fifteenth Avenue Upgrade including Footpaths and Cycleways	\$389,000,000	\$40,476,247
Mamre Road Upgrade including Footpaths and Cycleways	\$317,000,000	\$52,270,108
Southern Link Road Upgrade including Footpaths and Cycleways	\$296,000,000	\$17,043,808
<b>Bus Infrastructure</b>		
Public Transport Facilities such as Bus Depots	\$36,000,000	\$5,241,730
Rapid Bus Corridor	\$551,425,616	\$19,625,179
<b>Rail Infrastructure</b>		
Luddenham Station and Aerotropolis Station	\$794,000,000	\$149,144,466
<b>Cycle Network</b>		
Bicycle network within the green grid	\$286,608,850	\$48,197,080

<b>Green Infrastructure</b>		
Multifunctional Open Space	\$61,678,750	\$34,144,070
Regional Open Space	\$844,161,212	\$209,450,579
Urban Tree Canopy	\$28,001,000	\$5,169,483
Biodiversity Offset - Cumberland Plain Conservation Plan	\$350,465,998	\$350,465,998
Biodiversity Offset – South West Western Sydney Growth Area	\$82,324,172	\$61,743,129
Thompsons Creek - Regional Open Space	\$351,160,054	\$351,160,054
<b>Health</b>		
Ambulance Station	\$14,479,900	\$5,309,249
Community Health Facility	\$47,630,792	\$308,102
<b>Education</b>		
New and Upgrades to Existing Primary, Secondary, and Special Purpose Schools	\$636,750,000	\$210,862,201
<b>Justice</b>		
Expand Existing Court Houses	\$210,000,000	\$21,387,909
<b>Emergency Services</b>		
New and Upgrades to Existing Police Facilities	\$93,000,000	\$33,839,599
New and Upgrades to Existing Fire and Rescue Facilities	\$26,687,500	\$14,002,947
<b>Community</b>		
New and Upgrades to Existing Community Facilities	\$520,111,915	\$20,675,985
<b>Planning and Delivery</b>		<b>\$16,526,828</b>
<b>TOTAL</b>		<b>\$2,362,132,859</b>