



New South Wales

Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023 No 10

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Environmental Planning and Assessment Act 1979 No 203	3



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Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023 No 10

Act No 10, 2023

An Act to amend the *Environmental Planning and Assessment Act 1979* to provide for housing and productivity contributions; and for other purposes. [Assented to 13 July 2023]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 **Amendment of Environmental Planning and Assessment Act 1979 No 203**

[1] Section 4.8 Exercise of consent authority functions on behalf of councils where local planning panel constituted

Omit “7.24” from section 4.8(4)(b). Insert instead “7.28”.

[2] Section 4.17 Imposition of conditions

Omit section 4.17(1)(h). Insert instead—

- (h) it is authorised to be imposed under the following—
 - (i) section 4.16(3) or (5),
 - (ii) subsections (5)–(9) of this section,
 - (iii) section 7.11 or 7.12,
 - (iv) Division 7.1, Subdivision 4,
 - (v) section 7.32.

[3] Section 6.5 Functions of certifiers (including principal certifiers)

Omit “this Part” from section 6.5(5)(a). Insert instead “this part or Part 7”.

[4] Section 7.1 Definitions

Omit the definition of *special contributions area*.

[5] Section 7.4 Planning agreements

Omit section 7.4(3)(d). Insert instead—

- (d) for development—whether the agreement wholly or partly excludes the application of the following provisions—
 - (i) section 7.11,
 - (ii) section 7.12,
 - (iii) Division 7.1, Subdivision 4,

[6] Section 7.4(5A)

Omit “section 7.24”. Insert instead “Division 7.1, Subdivision 4”.

[7] Section 7.18 Contributions plans—making

Omit section 7.18(2A).

[8] Division 7.1, Subdivisions 4 and 5

Omit the subdivisions. Insert instead—

Subdivision 4 Housing and productivity contributions

7.22 Definitions

In this subdivision and Subdivision 5—

biodiversity certified land means—

- (a) land—
 - (i) the subject of an application declared to be a strategic application for biodiversity certification under the *Biodiversity Conservation Act 2016*, section 8.5(2), and

- (ii) on which biodiversity certification has been conferred, extended or modified under that Act, Part 8, or
- (b) land taken to be biodiversity certified under that Act or otherwise subject to biodiversity certification.

HAP Fund—see section 7.31A.

housing and productivity contribution—see section 7.24(1).

measures to conserve or enhance the natural environment—see section 7.24(1).

region means an area of land identified in a Ministerial planning order as a region for the purposes of this subdivision.

regional infrastructure means the following—

- (a) public amenities or public services, including infrastructure that enhances public open space or the public domain,
- (b) affordable housing,
- (c) public housing within the meaning of the *Housing Act 2001*,
- (d) transport infrastructure,
- (e) regional or State roads,
- (f) measures to conserve or enhance the natural environment.

SBC Fund—see section 7.30(1).

strategic biodiversity component—see section 7.26(1)(f)(ii).

strategic plan has the same meaning as in Division 3.1.

transport project component—see section 7.26(1)(f)(i).

Treasury Secretary means the Secretary of the Treasury.

7.23 Effect of subdivision

Nothing in this subdivision affects the operation of Subdivision 2 or 3.

7.24 Provision of regional infrastructure

- (1) The object of this subdivision is to facilitate the provision of regional infrastructure that supports and promotes housing and economic activity in a region by enabling a contribution (a **housing and productivity contribution**) to be required.
- (2) Regional infrastructure may be provided in 1 or more of the following ways—
 - (a) by providing the regional infrastructure,
 - (b) by recouping the cost of providing the regional infrastructure,
 - (c) by funding recurrent expenditure relating to providing the regional infrastructure,
 - (d) by the Minister, the Planning Ministerial Corporation or the Planning Secretary exercising the following functions in the administration of this part—
 - (i) carrying out research or investigation,
 - (ii) preparing a report or study or an instrument,
 - (iii) doing another matter or thing in connection with the administration of this part.
- (3) Regional infrastructure provided under subsection (2)(a)–(c) may be provided by making a payment to a council for the council to provide the regional infrastructure.

- (4) A Ministerial planning order may require a housing and productivity contribution towards the provision of regional infrastructure.
- (5) A housing and productivity contribution must not be imposed on development on land in a region to provide regional infrastructure outside the region or the State, except to the extent that it is for measures to conserve or enhance the natural environment.
- (6) In this section—
provide infrastructure includes to extend or augment infrastructure.

7.25 Measures to conserve or enhance the natural environment

In this subdivision, *measures to conserve or enhance the natural environment* include the following measures implemented by the State or a council—

- (a) a measure relating to biodiversity certified land, including the following—
 - (i) an approved conservation measure specified in the order conferring biodiversity certification on the land,
 - (ii) other approved measures referred to in the *Biodiversity Conservation Act 2016*, section 8.3(3),
 - (iii) costs and expenses incurred by the Minister, the Planning Secretary, a council or another prescribed person in making an application for biodiversity certification under that Act,
- (b) a measure that directly conserves or enhances the natural environment and is undertaken—
 - (i) for the purposes of an endorsed policy, plan or program, within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, section 146A, or
 - (ii) under the conditions of an approval of the taking of actions or a class of actions under that Act, section 146B.

Note— The Commonwealth Minister for the Environment may approve the taking of actions or a class of actions in accordance with a policy, plan or program endorsed in accordance with an agreement on strategic assessment—see the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, Part 10.

7.26 Content of Ministerial planning orders requiring housing and productivity contributions

- (1) A Ministerial planning order that requires a housing and productivity contribution must specify the following—
 - (a) the level and nature of the housing and productivity contribution,
 - (b) the classes of development to which the housing and productivity contribution will apply,
 - (c) the region, or part of the region, to which the housing and productivity contribution applies,
 - (d) the way in which the housing and productivity contribution must be determined,
 - (e) the time at which the housing and productivity contribution is required,
 - (f) whether the housing and productivity contribution includes—
 - (i) a component imposed on development on land identified in the Ministerial planning order as an area that benefits, or will benefit,

- from the provision of specified transport infrastructure (a *transport project component*), and
- (ii) a component imposed on development on biodiversity certified land as a contribution towards a measure referred to in section 7.25 (a *strategic biodiversity component*),
 - (g) whether the housing and productivity contribution is required when a complying development certificate is issued for development.
- (2) A Ministerial planning order that requires a housing and productivity contribution may specify the following—
- (a) requirements relating to the form of the housing and productivity contribution,
 - (b) conditions that must be imposed by a consent authority or certifier as a condition of development consent, including the terms of the conditions,
 - (c) whether the conditions must require the person having the benefit of the development consent to obtain a decision by the Planning Secretary about—
 - (i) the housing and productivity contribution required under the Ministerial planning order, and
 - (ii) other obligations arising under the Ministerial planning order,
 - (d) exemptions from the housing and productivity contribution,
 - (e) the indexation of the housing and productivity contribution.

7.27 Making Ministerial planning orders requiring housing and productivity contributions

- (1) Before making a Ministerial planning order that requires a housing and productivity contribution, the Minister must obtain the concurrence of the Treasurer.
- (2) A Ministerial planning order that requires a housing and productivity contribution comes into force—
 - (a) when it is published on the NSW planning portal, or
 - (b) if a later day is specified in the order—on the later day.

7.28 Housing and productivity contributions imposed as conditions of development consent

- (1) If a Ministerial planning order requires a housing and productivity contribution in relation to development—
 - (a) a consent authority must impose a condition on a development consent for the development requiring the housing and productivity contribution, or
 - (b) for complying development—a certifier must impose a condition on a complying development certificate for the development requiring the housing and productivity contribution.
- (2) The condition must be imposed in accordance with the Ministerial planning order.
- (3) If the consent authority or the certifier fails to impose the condition, the condition—
 - (a) is taken to have been imposed in the terms required by the Ministerial planning order, and

- (b) the condition has effect as if it had been imposed by the consent authority or the certifier.
- (4) A housing and productivity contribution may be required in addition to a condition imposed under section 7.11 or 7.12.
- (5) If a housing and productivity contribution is required to be made before a certificate under Part 6 or a strata certificate under the *Strata Schemes Development Act 2015* is issued for development, the certificate must not be issued until the contribution is made.
- (6) A condition imposed under this section must not be modified without the approval of the Minister.

7.29 No connection required

No connection is required between the development on which a housing and productivity contribution is imposed and the regional infrastructure provided from the contribution, except—

- (a) a transport project component of the contribution may be imposed on development on land only for transport infrastructure that benefits the area in which the land is located, and
- (b) a strategic biodiversity component of the contribution may be imposed on development on land only for measures to conserve or enhance the natural environment that were required for biodiversity certification of the land.

7.30 No appeals

A person cannot appeal to the Court under this Act in relation to a condition imposed under this subdivision.

7.31 SBC Fund

- (1) There is established in the Special Deposits Account a fund called the Strategic Biodiversity Contributions Fund (***SBC Fund***).
- (2) The SBC Fund must be administered by the Planning Secretary.
- (3) The following must be paid into the SBC Fund—
 - (a) payments relating to a strategic biodiversity component of a housing and productivity contribution,
 - (b) money appropriated by Parliament for the purposes of the SBC Fund,
 - (c) the proceeds of the investment of money in the SBC Fund,
 - (d) other money required to be paid into the SBC Fund by or under this Act, the regulations or other legislation,
 - (e) money advanced by the Treasurer for the purposes of the SBC Fund.
- (4) The assets of the SBC Fund may be applied only for the following purposes—
 - (a) payments to public authorities for the provision of regional infrastructure that is a measure referred to in section 7.25,
 - (b) money required to meet administrative expenses in relation to the SBC Fund,
 - (c) other money directed or authorised to be paid from the SBC Fund by this Act or the regulations,
 - (d) money to repay money advanced by the Treasurer under subsection (3)(e).

- (5) A payment for the provision of regional infrastructure that is an approved conservation measure referred to in section 7.25(a)(i) must be made in accordance with the order specifying the approved conservation measure.
- (6) The Planning Secretary may make a payment out of the SBC Fund, other than a repayment of money advanced by the Treasurer, only—
 - (a) with the approval of the Minister, and
 - (b) after consultation with the Treasurer.
- (7) This section does not limit payments being made out of the HAP Fund to the Planning Secretary under section 7.31D.
- (8) The money in the SBC Fund may be invested in a way that the Minister is permitted to invest money under the *Government Sector Finance Act 2018*, Part 6.

Subdivision 5 Establishment of Housing and Productivity Fund

7.31A Establishment of HAP Fund

- (1) There is established in the Special Deposits Account a fund called the Housing and Productivity Fund (*HAP Fund*).
- (2) Different accounts must be established in the HAP Fund to ensure—
 - (a) housing and productivity contributions from development on land in a region, and proceeds from the investment of the contributions, are expended in the region as required by Subdivision 4, and
 - (b) the transport project component from development on land in an area, and proceeds from the investment of the component, are expended for the benefit of the area.
- (3) The HAP Fund must be administered by the Treasury Secretary.

7.31B Purpose of HAP Fund

- (1) The purpose of the HAP Fund is to support housing and promote economic activity in each region for which a housing and productivity contribution is required.
- (2) The HAP Fund achieves this by providing a source of funding for regional infrastructure in the region that—
 - (a) facilitates the achievement of the planning priorities identified in a strategic plan applicable in the region, and
 - (b) is able to be delivered in a reasonable time, and
 - (c) is aligned with the asset management plan of the public authority to whom funding is provided.
- (3) The planning priorities include the targets for net additional dwellings in each district referred to in section 3.4(6), definition of *planning priorities*.

7.31C Payments into HAP Fund

The following must be paid into the HAP Fund—

- (a) housing and productivity contributions made under Subdivision 4, except for amounts required to be paid into the SBC Fund,
- (b) money appropriated by Parliament for the purposes of the HAP Fund,
- (c) the proceeds of the investment of money in the HAP Fund,

- (d) money required to be paid into the HAP Fund by or under this Act, the regulations or other legislation,
- (e) money advanced by the Treasurer for the purposes of the HAP Fund.

7.31D Payments out of HAP Fund

- (1) The following are payable from the HAP Fund—
 - (a) payments to public authorities for the provision of regional infrastructure, including associated administrative expenses,
 - (b) money required to meet administrative expenses in relation to the HAP Fund,
 - (c) money directed or authorised to be paid from the HAP Fund by this Act or the regulations,
 - (d) money to repay money advanced by the Treasurer under section 7.31C(e).
- (2) A payment for the provision of regional infrastructure may be made if the infrastructure is—
 - (a) identified in a strategic plan, or
 - (b) identified in a State infrastructure strategy or an infrastructure plan under the *Infrastructure NSW Act 2011*, Part 4, or
 - (c) recommended for funding by the Minister because the Minister considers the infrastructure assists in achieving the purpose of the HAP Fund.
- (3) In making a recommendation under subsection (2)(c), the Minister must consider any representations made, in accordance with arrangements established by the Minister, by the following—
 - (a) public authorities that deliver regional infrastructure,
 - (b) councils,
 - (c) the development industry.
- (4) The Treasury Secretary may make a payment out of the HAP Fund, other than a repayment of money advanced by the Treasurer, only—
 - (a) with the approval of the Treasurer, and
 - (b) after consulting with the Minister.
- (5) The regulations may provide for councils to make submissions to the Minister and Treasurer about future payments from the HAP Fund.

7.31E Investment of money in HAP Fund

The money in the Fund may be invested in a way that the Treasurer is permitted to invest money under the *Government Sector Finance Act 2018*, Part 6.

Subdivision 6 Report by Treasurer

7.31F Treasurer to give annual report

- (1) The Treasurer must prepare a report detailing, for each financial year, the payments made into, and from, each of the following—
 - (a) the SBC Fund,
 - (b) the HAP Fund.

- (2) The report must be in the form required by the regulations.
- (3) The Treasurer must provide the report to each House of Parliament within 4 months of the end of the financial year to which the report relates.
- (4) In this section—
financial year means a period of 12 months commencing on 1 July.

[9] Section 7.32 Conditions requiring land or contributions for affordable housing

Omit section 7.32(6).

[10] Section 7.46 Recovery of charges etc

Insert at the end of section 7.46—

- (2) A monetary contribution required to be paid under this part may be recovered as a debt in a court of competent jurisdiction by the following—
 - (a) for a contribution under Division 7.1, Subdivision 3—the relevant consent authority or council,
 - (b) for a housing and productivity contribution under Division 7.1, Subdivision 4—the Treasury Secretary or the Planning Secretary.

[11] Schedule 4

Omit the schedule. Insert instead—

Schedule 4 Savings, transitional and other provisions

Part 1 Provision consequent on enactment of Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023

1 Continuation of special infrastructure contributions

- (1) The former SIC provisions, including anything done under the provisions, continue to apply, subject to the regulations under subclause (4), to—
 - (a) a determination made under the former section 7.23 (a *7.23 determination*), and
 - (b) a direction made under the former section 7.24 (a *7.24 direction*), and
 - (c) a condition of development consent imposed under former section 7.24.
- (2) A 7.23 determination or 7.24 direction in force immediately before the commencement of the amending Act, Schedule 1[8] continues in force until repealed—
 - (a) under the former SIC provisions, or
 - (b) by a Ministerial planning order.
- (3) The instrument that repeals a 7.23 determination or a 7.24 direction may contain savings and transitional provisions consequent on the repeal.
- (4) The regulations may make provision about the continued application of the former SIC provisions, including the following—

- (a) specifying determinations and directions made under the former section 7.23 and the former section 7.24, respectively, to which the former SIC provisions do not apply,
 - (b) excluding specified land, being land subject to the former SIC provisions, from the application of Division 7.1, Subdivision 4, as substituted by the amending Act,
 - (c) amending the areas to which a 7.23 determination or a 7.24 direction applies,
 - (d) providing how the Act and regulations, including former provisions, apply to the former SIC provisions.
- (5) In making a recommendation under section 7.31D(2)(c), the Minister must consider infrastructure identified in—
- (a) a 7.23 determination, or
 - (b) a proposal publicly exhibited under former section 7.23(4)(b) in relation to which a 7.23 determination was not made.

- (6) In this clause—

amending Act means the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023*.

former section 7.23 means section 7.23, as in force immediately before its substitution by the amending Act.

former section 7.24 means section 7.24, as in force immediately before its substitution by the amending Act.

former SIC provisions means Division 7.1, Subdivisions 4 and 5 and Schedule 4, as in force immediately before the substitution of the provisions by the amending Act.

[Second reading speech made in—

Legislative Assembly on 23 May 2023

Legislative Council on 27 June 2023]