



New South Wales

Environmental Planning and Assessment Legislation Amendment (Housing and Productivity Contributions) Regulation 2023

under the

Environmental Planning and Assessment Act 1979

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following regulation under the *Environmental Planning and Assessment Act 1979*.

PAUL SCULLY, MP
Minister for Planning and Public Spaces

Explanatory note

The object of this regulation is to make amendments to the *Environmental Planning and Assessment Regulation 2021* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* consequent on the enactment of the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023* (the **amending Act**).

The amending Act amends the *Environmental Planning and Assessment Act 1979* (the **principal Act**) to establish a new housing and productivity contributions scheme. The new scheme replaces the scheme for development contributions for the provision of infrastructure in relation to development on land in a special contributions area.

In particular, this regulation makes amendments of a savings or transitional nature—

- (a) to deal with the application of certain provisions of the principal Act to development in former and continuing special contributions areas, and
- (b) to provide for the continuation of the Special Contributions Areas Infrastructure Fund, and
- (c) to provide for the construction of references in planning agreements and other instruments.

This regulation is made under the *Environmental Planning and Assessment Act 1979*, including sections 10.13, the general regulation-making power, and 10.15 and Schedule 4, Part 1.

Environmental Planning and Assessment Legislation Amendment (Housing and Productivity Contributions) Regulation 2023

under the

Environmental Planning and Assessment Act 1979

1 Name of regulation

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

2 Commencement

This regulation commences on 1 October 2023.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2021

[1] **Section 222A Payments out of Special Contributions Areas Infrastructure Fund—the Act, s 7.30(1)(c)**

Omit “determination of the Minister under the Act, section 7.23” from section 222A(1).
Insert instead “continued 7.23 determination”.

[2] **Section 222A(2)**

Insert in alphabetical order—

continued 7.23 determination means a 7.23 determination that—

- (a) has been continued in force by the Act, Schedule 4, Part 1, and
- (b) has not been repealed as provided by that part.

Note—The Act, Schedule 4, Part 1 contains other definitions that affect the interpretation of this section.

[3] **Section 222A(2), definition of “provision of infrastructure”**

Insert “, as in force immediately before 1 October 2023” after “Subdivision 4”.

[4] **Section 222A(2), definition of “the Fund”**

Omit “has the same meaning as in the Act, Division 7.1, Subdivision 5”.
Insert instead “means the SCAI Fund continued by Schedule 6”.

[5] **Schedule 2 Planning certificates**

Omit section 3. Insert instead—

3 Contributions

- (1) The name of each contributions plan under the Act, Division 7.1 applying to the land, including draft contributions plans.
- (2) If the land is in a region within the meaning of the Act, Division 7.1, Subdivision 4—
 - (a) the name of the region, and
 - (b) the name of the Ministerial planning order in which the region is identified.
- (3) If the land is in a special contributions area to which a continued 7.23 determination applies, the name of the area.
- (4) In this section—

continued 7.23 determination means a 7.23 determination that—

- (a) has been continued in force by the Act, Schedule 4, Part 1, and
- (b) has not been repealed as provided by that part.

Note—The Act, Schedule 4, Part 1 contains other definitions that affect the interpretation of this section.

[6] **Schedule 6 Savings, transitional and other provisions**

Insert at the end of the schedule, with appropriate part and section numbering—

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

Definitions

In this part—

commencement day means 1 October 2023.

continued 7.23 determination means a 7.23 determination that—

- (a) has been continued in force by the Act, Schedule 4, Part 1, and
- (b) has not been repealed as provided by that part.

continued 7.24 direction means a 7.24 direction that—

- (a) has been continued in force by the Act, Schedule 4, Part 1, and
- (b) has not been repealed as provided by that part.

continuing SCA planning agreement means an existing planning agreement that applies to development on land in a continuing special contributions area.

continuing special contributions area means a special contributions area to which a continued 7.23 determination and a continued 7.24 direction apply.

existing planning agreement means—

- (a) a planning agreement entered into before the commencement day and in force, including amendments to the planning agreement, if any, or
- (b) a proposed planning agreement in relation to which the period of public notice required under the Act, section 7.5 has commenced before the commencement day, including amendments to the proposed planning agreement, if any.

former SCA planning agreement means an existing planning agreement that applies to development on land in a former special contributions area.

former special contributions area means a special contributions area that is not subject to a continued 7.23 determination or a continued 7.24 direction.

pending development application means—

- (a) a development application that is made, but not determined, before the commencement day, or
- (b) a development application that is made and determined before the commencement day but has not been finally determined, or
- (c) an application for a complying development certificate that is made, but not determined, before the commencement day.

planning agreement has the same meaning as in the Act, Division 7.1.

SCAI Fund means the Special Contributions Areas Infrastructure Fund as maintained and administered under the former SIC provisions immediately before the substitution of the provisions by the amending Act.

special contributions area means a special contributions area within the meaning of the Act, Division 7.1, as in force immediately before the commencement day.

Note— The Act, Schedule 4, Part 1 contains other definitions that affect the interpretation of this part.

Construction of references

- (1) Except as otherwise provided by this part, on and from the repeal or substitution of a provision of the Act by the amending Act—
 - (a) a reference in a planning agreement to the provision repealed or substituted is not to be read as a reference to a corresponding provision of the Act inserted by the amending Act, and
 - (b) a reference in a planning agreement to an act, matter or thing done under the provision repealed or substituted is not to be read as a reference to an act, matter or thing done under a corresponding provision of the Act inserted by the amending Act.
- (2) On and from the commencement day, a reference in a biodiversity certification order to a special infrastructure contribution is taken to include a reference to a housing and productivity contribution under the Act, Division 7.1, Subdivision 4.
- (3) In the application of a continued provision to a pending development application, a reference in the provision to a special contributions area is to be read—
 - (a) if the development application applies to development on land in a continuing special contributions area—as a reference to a continuing special contributions area, or
 - (b) if the development application applies to development on land in a former special contributions area—as a reference to a former special contributions area.
- (4) In this section—

biodiversity certification order means an order made under the *Threatened Species Conservation Act 1995* that—

 - (a) confers biodiversity certification on an area of land, and
 - (b) applies to a former special contributions area.

continued provision means a repealed provision of an environmental planning instrument that continues to apply to a pending development application despite its repeal.

Planning certificates

- (1) During the transition period—
 - (a) the matters set out in Schedule 2, section 3, as inserted by the *Environmental Planning and Assessment Legislation Amendment (Housing and Productivity Contributions) Regulation 2023*, are not required to be specified in a planning certificate for the purposes of the Act, section 10.7, and
 - (b) a reference in a planning certificate to a special contributions area, other than a continuing special contributions area, has no effect for the purposes of the Act, section 10.7.
- (2) In this section—

transition period means the period commencing on the commencement day and ending immediately before 1 February 2024.

Continuation of Special Contributions Areas Infrastructure Fund

- (1) The SCAI Fund continues in existence despite the repeal of the former SIC provisions by the amending Act.

- (2) The Act, Division 7.1, Subdivision 5, as in force immediately before its repeal by the amending Act, continues to apply to and in relation to—
 - (a) the SCAI Fund, and
 - (b) money in the SCAI Fund immediately before the commencement day, and
 - (c) money to be paid into the SCAI Fund.

Dissolution of Special Contributions Areas Infrastructure Fund

- (1) The Minister may, by order published in the Gazette—
 - (a) designate a day as the *dissolution day* for the purposes of this section, and
 - (b) designate the proportion of the existing special infrastructure contributions in relation to development within each special contributions area that is to be paid under this section to each of the following funds—
 - (i) the SBC Fund,
 - (ii) the HAP Fund.
- (2) An order must not be made under subsection (1) if a continued 7.23 determination or a continued 7.24 direction is in force.
- (3) On the dissolution day—
 - (a) the SCAI Fund is dissolved, and
 - (b) the existing special infrastructure contributions in relation to development within each special contributions area are transferred to the SBC Fund and the HAP Fund in the proportions designated for the area under subsection (1), and
 - (c) all other money standing to the credit of the SCAI Fund immediately before the dissolution day is transferred to the SBC Fund and the HAP Fund in the same proportions as the existing special infrastructure contributions under paragraph (b).
- (4) On and from the dissolution day, money required to be paid into the SCAI Fund in relation to development within a special contributions area is to be paid into the SBC Fund and the HAP Fund in the proportions designated for the area under subsection (1).
- (5) In this section—

existing special infrastructure contributions means money—

 - (a) standing to the credit of the SCAI Fund immediately before the dissolution day, and
 - (b) paid to the fund as monetary contributions, or proceeds of the sale of land, under the former SIC provisions in relation to development within a special contributions area.

HAP Fund means the Housing and Productivity Fund established under the Act, Division 7.1, Subdivision 5.

SBC Fund means the Strategic Biodiversity Contributions Fund established under the Act, Division 7.1, Subdivision 4.

Application of amendments to continued 7.24 directions

- (1) The Act, section 4.8(4)(b), as amended by the amending Act, extends to the functions of a consent authority in relation to a continued 7.24 direction.

- (2) In the application of the Act, section 4.8(4)(b) to a continued 7.24 direction, the reference in the paragraph to “section 7.28” is to be read as a reference to “section 7.24, as in force before its substitution by the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023*”.
- (3) The Act, section 4.17(1)(h), as substituted by the amending Act, extends to a condition authorised or required to be imposed in accordance with former section 7.24.
- (4) In the application of the Act, section 4.17(1)(h) to a condition authorised or required to be imposed in accordance with former section 7.24, a reference in the Act, section 4.17(1)(h)(iv) to “Division 7.1, Subdivision 4” is to be read as a reference to “section 7.24, as in force before its substitution by the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Act 2023*”.
- (5) The Act, section 7.12(2A) does not apply to a continuing special contributions area.
- (6) In this section—
continued 7.24 direction includes a 7.24 direction that—
 - (a) applies to a pending development application, and
 - (b) has been repealed as provided by the Act, Schedule 4, Part 1.

Existing planning agreements—general

- (1) An existing planning agreement that excludes, wholly or partly, the application of former section 7.24 to development is taken on and from the commencement day to exclude, to the same extent, the application of the Act, Division 7.1, Subdivision 4 to the development.
- (2) An existing planning agreement that does not exclude the application of former section 7.24 to development is taken on and from the commencement day not to exclude the application of the Act, Division 7.1, Subdivision 4 to the development.
- (3) Subsections (1) and (2) do not apply—
 - (a) to a continuing SCA planning agreement, or
 - (b) to a former SCA planning agreement that applies to development the subject of a pending development application, or
 - (c) to an existing planning agreement to the extent that the agreement otherwise expressly provides.

Existing planning agreements—continuing special contributions areas

- (1) A continuing SCA planning agreement that excludes, wholly or partly, the application of former section 7.24 to development—
 - (a) continues on and from the commencement day to exclude, to the same extent, the application of former section 7.24 to the development, and
 - (b) is taken on and from the commencement day to exclude, to the same extent, the application of the Act, Division 7.1, Subdivision 4 to the development.
- (2) A continuing SCA planning agreement that does not exclude the application of former section 7.24 to development—

- (a) continues on and from the commencement day not to exclude the application of former section 7.24 to the development, and
 - (b) is taken on and from the commencement day not to exclude the application of the Act, Division 7.1, Subdivision 4 to the development.
- (3) Subsections (1) and (2) do not apply to the extent that a continuing SCA planning agreement otherwise expressly provides.

Existing planning agreements—former special contributions areas

- (1) To the extent that a former SCA planning agreement applies to development that is the subject of a pending development application—
- (a) if the agreement excludes, wholly or partly, the application of former section 7.24 to the development—the agreement continues on and from the commencement day to exclude, to the same extent, the application of former section 7.24 to the development, or
 - (b) if the agreement does not exclude the application of former section 7.24 to the development—the agreement continues on and from the commencement day not to exclude the application of former section 7.24 to the development.
- (2) To the extent that a former SCA planning agreement applies to development that is not the subject of a pending development application—
- (a) if the agreement excludes, wholly or partly, the application of former section 7.24 to the development—the agreement is taken on and from the commencement day to exclude, to the same extent, the application of the Act, Division 7.1, Subdivision 4 to the development, or
 - (b) if the agreement does not exclude the application of former section 7.24 to the development—the agreement is taken on and from the commencement day not to exclude the application of the Act, Division 7.1, Subdivision 4 to the development.
- (3) Subsections (1) and (2) do not apply to the extent that a former SCA planning agreement otherwise expressly provides.

Proposed planning agreements

- (1) In the application of the Act, section 7.4(5A) to a proposed planning agreement, a reference in the subsection to “Division 7.1, Subdivision 4” is taken to include a reference to “former section 7.24”.
- (2) In this section—
- proposed planning agreement*** means a proposed planning agreement—
- (a) that is a continuing SCA planning agreement or a former SCA planning agreement, and
 - (b) in relation to which the period of public notice required under the Act, section 7.5 has commenced before the commencement day.

New planning agreements

- (1) In the application of an amended provision to a new planning agreement, a reference in the provision to “Division 7.1, Subdivision 4” is taken to include a reference to “former section 7.24”.
- (2) To avoid doubt, a planning agreement that applies to development referred to in subsection (1) must provide for whether the agreement wholly or partly excludes the application of each of the following—

- (a) former section 7.24,
 - (b) the Act, Division 7.1, Subdivision 4.
- (3) In this section—
- amended provision** means either of the following provisions of the Act—
- (a) section 7.4(3)(d), as inserted by the amending Act,
 - (b) section 7.4(5A), as amended by the amending Act.
- new planning agreement** means a planning agreement, other than an existing planning agreement, that applies to—
- (a) development on land in a continuing special contributions area, or
 - (b) development on land in a former special contributions area that is subject to a pending development application.

Schedule 2 Amendment of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

[1] Section 37 Application for occupation certificate

Omit “under the Act, Division 7.1” from section 37(3)(b).

[2] Section 37(3)(b)

Insert “former” after “contribution under the Act,”.

[3] Section 46 Payment of development contributions

Omit “under the Act, Division 7.1” from section 46(3).

[4] Section 46(3)(b)(ii)

Insert “under former section 7.24” after “required”.

[5] Schedule 2 Dictionary

Insert in alphabetical order—

special contributions area means a special contributions area within the meaning of the Act, Division 7.1, as in force immediately before 1 October 2023.