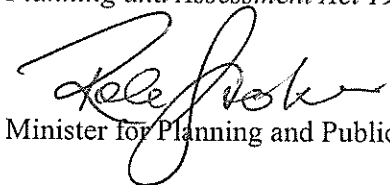


Environmental Planning and Assessment (Special Infrastructure Contribution – Bayside West) Determination 2020

under the

Environmental Planning and Assessment Act 1979

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


Minister for Planning and Public Spaces

Dated: 18th October, 2020.

1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Bayside West) Determination 2020*.

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 Bayside West Special Contributions Area.

4 Object of Determination

The main object of this Determination is to require special infrastructure contributions to be made for the provision of infrastructure in connection with the intensification of residential development in Bayside West, as generally outlined in Bayside West Precincts 2036, published by the Department of Planning, Industry and Environment in August 2018.

5 Definitions

(1) In this Determination:

Bayside West Special Contributions Area means the special contributions area of that name as described in Schedule 4 to the Act.

Bayside West Special Contributions Area Map means the map marked “Bayside West Special Contributions Area Map” approved by the Minister on the making of the *Environmental Planning and Assessment Amendment (Bayside West Special Contributions Area) Order 2020*.

Note. A copy of the map identifying the Bayside West Special Contributions Area is reproduced in Schedule 1 for information and is able to be viewed on the NSW legislation website: <https://www.legislation.nsw.gov.au/#/view/act/1979/203/sch4>.

contribution rate – see clauses 10 and 11.

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

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

development consent includes a complying development certificate.

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

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

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

residential accommodation means any of the following:

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

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

social housing provider means any of the following:

- (a) the New South Wales Land and Housing Corporation constituted by the *Housing Act 2001*,
- (b) a registered community housing provider within the meaning of the Community Housing Providers National Law (NSW),
- (c) the Aboriginal Housing Office constituted by the *Aboriginal Housing Act 1998*,

- (d) a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,
- (e) a provider of specialist disability accommodation under the *National Disability Insurance Scheme Act 2013* of the Commonwealth,
- (f) a local government authority that provides affordable housing,
- (g) a not-for-profit organisation that is a direct provider of rental housing to tenants.

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

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

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

- (2) Words or expressions used in this Determination have the same meanings as they have in the Act, unless otherwise defined.
- (3) The following words or expressions have the same meanings as they have in the Standard Instrument:
 - (a) attached dwelling,
 - (b) dual occupancy,
 - (c) dwelling,
 - (d) dwelling house,
 - (e) floor space ratio,
 - (f) gross floor area,
 - (g) multi-dwelling housing,
 - (h) residential flat building,
 - (i) secondary dwelling,
 - (j) semi-detached dwelling,
 - (k) seniors housing,
 - (l) shop top housing.
- (4) If the Consumer Price Index (All Groups Index) for Sydney ceases to be published or issued by the Australian Bureau of Statistics, a reference in this Determination to the index is taken to be a reference instead to an index designated by the Minister for the purposes of this Determination.
- (5) A reference in this Determination to the Minister in relation to a special infrastructure contribution works-in-kind agreement includes a reference to the Planning Secretary, or other officer of the Department of Planning, Industry and Environment, acting for and on behalf of the Crown in right of the State of New South Wales.

6 Development for which SIC must be made

- (1) Subject to this clause, a special infrastructure contribution must be made for development within the Bayside West Special Contributions Area if the development consists of, or

involves, development for the purpose of residential accommodation (including as part of mixed use development).

Note. A special infrastructure contribution may be imposed only as a condition of development consent. See the direction given by the Minister under section 7.24 of the *Environmental Planning and Assessment Act 1979* to consent authorities and registered certifiers to impose a condition to require a special infrastructure contribution in accordance with this Determination on a grant of consent given after the date on which this Determination takes effect.

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

Note. A special infrastructure contribution cannot be imposed as a condition of consent to the carrying out of development if a planning agreement made in accordance with section 7.4 of the *Environmental Planning and Assessment Act 1979* excludes the application of section 7.24 of the Act to the development.

7 Development that is residential SIC development in part only

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

- (a) not only authorises development on land within the Bayside West Special Contributions Area, but also authorises development on land outside the Bayside West Special Contributions Area, or
- (b) also authorises development that is not residential SIC development.

8 Nature of contribution

- (1) The special infrastructure contribution for residential SIC development is to be made as:
 - (a) a monetary contribution, or
 - (b) a contribution of a kind specified in a special infrastructure contribution works-in-kind agreement that is in force in relation to the residential SIC development (being the carrying out of works for the provision of infrastructure or the dedication or other provision of land for the purpose of that infrastructure), or

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

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

- (2) The special infrastructure contribution may comprise part of the amount of the monetary contribution otherwise payable and the balance as a contribution provided by a special infrastructure contribution works-in-kind agreement (or a planning agreement of a kind described in subclause (1) (c)).
- (3) Despite subclauses (1) and (2), if residential SIC development is authorised by a complying development certificate, the special infrastructure contribution for the development may be made only as a monetary contribution.

9 Amount of monetary contribution

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

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

$\$C_p$ is the monetary contribution payable

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

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

10 Contribution rates for determining monetary contribution

- (1) The contribution rate that applies, at any time before 1 July 2021, in the calculation of the monetary contribution for residential SIC development is \$9,000 per additional dwelling.
- (2) The contribution rate that applies at any time during the 12 month period commencing 1 July 2021, and during each subsequent 12 month period, is to be determined by adjusting the contribution amount of \$9,000 in accordance with clause 11 (“adjusted contribution amount”). Accordingly, the contribution rate for any such period is the adjusted contribution amount per additional dwelling.

11 Annual adjustment of contribution rates

- (1) On 1 July 2021 and on 1 July in each subsequent year, the contribution amount of \$9,000 is to be adjusted by multiplying it by the following fraction:

latest *CPI number* /base *CPI number*

where:

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

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

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

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

12 Number of additional dwellings for calculating monetary contribution

- (1) For the purpose of calculating the amount of the monetary contribution under clause 9, the number of additional dwellings authorised by the development consent for the residential SIC development (the ***relevant development consent***) is, subject to this Determination, the sum of:
 - (a) the number of dwellings that the consent authorises to be erected, including as a result of any extension or enlargement to an existing building, and

- (b) the number of dwellings that will result from a change of use of an existing building that the consent authorises.
- (2) Any dwelling that is to be provided for public housing, or provided for seniors housing or affordable housing by or on behalf of a social housing provider, is not to be included, under subclause (1), in the number of additional dwellings authorised by the relevant development consent.
- (3) To avoid doubt, the number of additional dwellings authorised by the relevant development consent does not include:
 - (a) the number of existing dwellings on the land at the time that the relevant development consent was granted, or
 - (b) dwellings that are not residential accommodation.

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

13 Number of additional dwellings reduced by number of demolished dwellings

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

14 Final decision by Secretary of number of additional dwellings

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

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

15 When a monetary contribution for residential SIC development must be paid

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

Note. See also clause 18 that allows for deferral of payment of contributions during the COVID-19 pandemic period.

16 When a monetary contribution for complying development must be paid

Despite clause 15, if a complying development certificate is issued for residential SIC development, the special infrastructure contribution must be paid:

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

whichever is the earlier.

17 Additional contributions payable if more dwellings created by strata plan

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

18 Deferral of payment during COVID-19 pandemic period

Application of clause

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

SIC not required until occupation certificate stage

- (3) Despite clause 15, the special infrastructure contribution required by a development consent to which this clause applies, if made as a monetary contribution, may be paid at any time before the issue of the first occupation certificate in respect of any of the buildings to which the development consent relates, and is not required to be paid before the issue of a construction certificate in relation to the building work involved.
- (4) However, if no construction certificate in relation to any such building work has been issued on or before 25 September 2022, the special infrastructure contribution, if outstanding, must be paid before the issue of a construction certificate for the building work.

Interpretation

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

Note. Under section 10.17 of the *Environmental Planning and Assessment Act 1979*, the prescribed period commenced on 25 March 2020. It ends on 25 March 2021.

19 Reduction of rate for first 2 years in light of pandemic

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

- (a) at any time before 1 July 2021 – the amount that would otherwise be payable is reduced by one half, and
- (b) at any time between 1 July 2021 and 30 June 2022 – the amount that would otherwise be payable is reduced by one quarter.

20 Special infrastructure contribution works-in-kind agreement

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

Note. The decision to negotiate or enter into a special infrastructure contribution works-in-kind agreement as proposed by a developer is entirely at the Planning Secretary'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 Secretary may decide not to agree to the developer providing that other item.

21 Matters for which special infrastructure contribution is made

- (1) For the purpose of section 7.23 (3A) of the Act, 1.5% of a special infrastructure contribution required to be made by this Determination is for matters specified in section 7.22 (1) (d) of the Act.

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

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

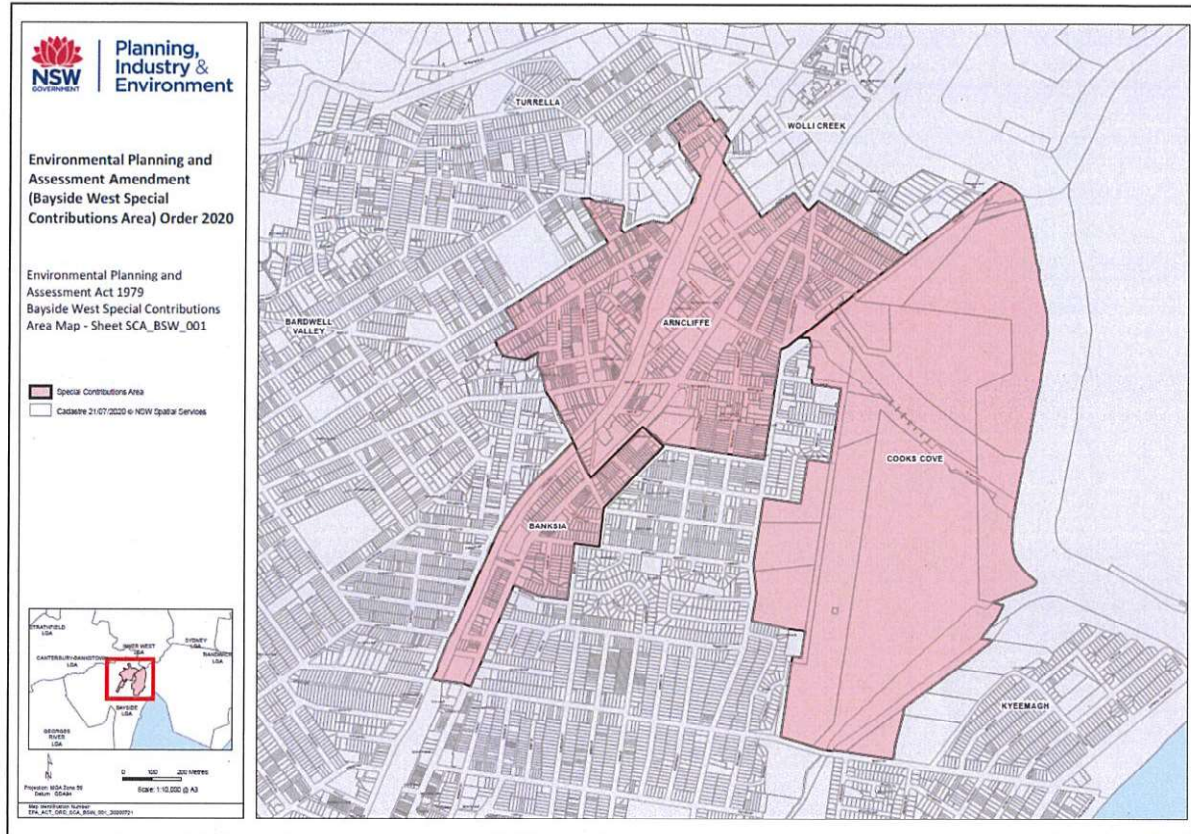
22 Reasons for the level and nature of special infrastructure contributions

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

- (a) to assist in providing adequate funding for public infrastructure (described in Schedule 2) in the Bayside West Special Contributions Area,

- (b) to ensure that future development bears a share of the cost of the provision of such infrastructure,
 - (c) to provide for the adjustment of special infrastructure contributions to reflect changes in economic conditions between the time of imposing the contribution and the time at which the contribution is made,
 - (d) to provide flexibility as to the manner in which special infrastructure contributions may be made,
 - (e) to ensure that special infrastructure contributions reflect a reasonable apportionment between the demand for infrastructure generated by existing development and the demand for that infrastructure that is likely to be generated by new development for which contributions must be paid,
 - (f) to ensure that the level of special infrastructure contributions does not adversely affect housing supply.
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SCHEDULE 1 – MAP FOR BAYSIDE WEST SPECIAL CONTRIBUTIONS AREA



SCHEDULE 2 – LIST OF INFRASTRUCTURE

Infrastructure	Attributable cost
Road and intersection upgrades – road improvements and intersection upgrades to roads within the Bayside West Special Contributions Area, such as the Princes Highway, Marsh Street, West Botany Street and Forest Street	\$16,464,856
Education – provision of additional primary school places generated by population growth with the Bayside West Special Contributions Area	\$22,193,311
Open Space – land acquisition for a future park in Arncliffe	\$25,250,000
Pedestrian and cycleway improvements – enhancement and expansion of cycleways and pedestrian paths along critical links such as the Cooks River foreshore, the Southern and Western Suburbs Ocean Outfall Sewer, Cahill Park and Tempe Reserve, and over the Princes Highway and Marsh Street	\$23,102,204
Planning and delivery	\$1,350,155
TOTAL	\$88,360,526