

# Ku-ring-gai S94 Plan 2004-2009 – Residential Development (Amendment No 1)

## **PART B : ADMINISTRATION AND ACCOUNTING**

### **1. What is the name of this plan?**

- 1.1 This contributions plan is called the Ku-ring-gai Section 94 Contributions Plan 2004-2009 – Residential Development (Amendment 1). This plan amends Ku-ring-gai Section 94 Contributions Plan 2004-2009 – Residential Development adopted by Council and effective from 30 June 2004.

### **2. What is the purpose of this plan?**

- 2.1 The primary purpose of this plan is to enable the Council to require a contribution towards the provision, extension or augmentation of:

- community facilities,
- recreation facilities and open space,
- traffic, pedestrian and cycleway facilities and public domain improvements and
- administration

that will, or are likely to be, required as a consequence of residential development in the area.

- 2.2 Residential development which is subject to S94 includes single dwelling houses, residential flat buildings, units, villas, townhouses, dual occupancies and developments under State Environmental Planning Policy (Seniors Living).

- 2.3 Other purposes of this plan are to:

- (i) ensure that the level of social and physical infrastructure provided throughout Ku-ring-gai is adequate for the population as it grows;
- (ii) enable Council to recoup funds which it spends on the provision of social and physical infrastructure in anticipation of likely future development;
- (iii) ensure that the existing community is not burdened by the provision of social and physical infrastructure required as a result of future development and disadvantaged by pressure on existing facilities and services;
- (iv) provide a comprehensive strategy for the assessment, collection, expenditure, accounting and review of development contributions until 2009; and
- (v) satisfy the requirements of the EP&A Act and Regulation.

### **3. To what area does this plan apply?**

- 3.1 This plan applies to all land within the Ku-ring-gai Local Government Area (LGA).

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3.2 Certain precincts, as shown on Figure 1, will contribute in greater or lesser amounts, to particular facilities which will benefit only the residents of part of the LGA, rather than all new residents in the LGA.

## **4. What is its relationship to other plans and policies?**

4.4 This contributions plan amends Ku-ring-gai Section 94 Contributions Plan 2004-2009 – Residential Development in a limited way by:

- updating the works schedule to include current cost estimates of capital works and land acquisition and to include some new works;
- authorising money paid for different purposes in accordance with conditions of development consents to be pooled and applied progressively for those purposes; and
- reviewing the plan in response to matters raised in various Court proceedings.

4.5 This contributions plan has been prepared having regard to practice notes issued in July 2005 by the Department of Infrastructure Planning and Natural Resources.

4.6 Development consents which include conditions requiring the payment of development contributions levied under the previous contributions plans including Ku-ring-gai Section 94 Contributions Plan 2004-2009 – Residential Development will continue to be acted upon and those contributions (together with any applicable inflation) will become due and payable in accordance with the wording of the relevant consent condition.

4.7 The Council will continue to expend all incoming contributions levied under the preceding Contributions Plans for the purposes for which they were levied in accordance with Section 94 of the Environmental Planning and Assessment Act 1979.

## **5. How does this plan operate?**

5.1 In determining a development application, Council may impose a condition requiring the payment of a monetary contribution and/or the dedication of land in accordance with the provisions of this plan.

## **6. When does the plan come into effect?**

6.1 This plan comes into effect when public notice is given of its' approval, being 19 October 2007.

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## 7. What formula is used to determine the contribution?

7.1 The formulas generally used to determine the contributions for residential development are:

$$\text{Total Contribution (CT)} = \$\text{Cap} + \$\text{Land} - \$\text{ECon} - \$\text{Grant}$$

THEN

$$\text{Contribution per person (CP)} = \frac{\text{CT}}{\text{P}}$$

P

where:

$\$Cap$  - sum of capital costs for facilities which have been or which are to be provided.

$\$Land$  - sum of land costs which have been or are to be acquired to provide the required public facilities.

$\$ECon$  - sum of any existing contributions (where relevant) which have been previously paid towards the provision of the public facility or are anticipated to be paid.

$\$Grant$  - sum of any grants, subsidies or other funding source which may be available to fund capital works.

P - anticipated increase in population to the year 2009.

7.2 Where a facility or service will be built to serve the long term capacity of the Residential Development Strategy and contributions collected over the period of several plans, the total cost of these facilities will be divided by the anticipated increase in population to the year 2026.

7.3 In certain situations the contribution has been determined by applying the same per capita rate of provision of a facility or service as is presently enjoyed by the existing population or the rate of provision which is targeted to be provided for the existing LGA population. An example is the provision of book stock, where the number of books required per capita for each new resident is the same as the current number of library books per capita in Ku-ring-gai LGA. In this case the formula is:

$$\text{Contribution per Person (CP)} = \text{Existing RP} \times \$\text{Cost}$$

where:

Existing RP – Existing Rate of Provision

$\$Cost$  – cost per item or place or  $m^2$  for facilities which have been or which are to be provided including both capital cost and land value and minus the sum of any grants, subsidies or other funding source which may be available to fund capital works where relevant. i.e.

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$$\text{\$Cost} = \frac{\text{\$Cap} + \text{\$Land} - \text{\$Grant}}{\text{Number of items, places or m}^2}$$

7.4 For the purposes of calculating the contribution rates, the following components have been *included*:

- the capital costs of the proposed works
- the costs of such master planning, detailed design and studies as are required for the proposed works; and
- the cost of acquiring land at current average market prices.

7.5 For the purposes of calculating the contribution rates, the following components have been excluded:

- the cost associated with the share of any proposed facilities and services (capital and land costs) which are intended to serve the existing population or to make up for an existing deficiency of provision
- any development contributions which may have been collected previously or are anticipated to be collected for the provision of a particular work which have not as yet been expended (deducted where relevant as  $\text{\$Econ}$  in the general formula)
- any assured grants, subsidies or funding from other sources which may be payable in respect of any nominated work (deducted as  $\text{\$Grant}$  in the general formula)
- any recoverable funding which has been provided for works which may have otherwise been provided under Section 94
- costs associated with ongoing or routine maintenance, staff resources or other recurrent expenses, other than where these are required as part of a contract to provide a program or service
- any facilities or services which may be required by the population, which another organisation or government agency is responsible for providing.

## 8. When are contributions payable?

8.1 A contribution is payable in full as follows:

- (i) in the case of development applications involving *subdivision* - before the release of any construction certificate related to the subdivision works or the release of the linen plan/subdivision certificate, whichever occurs first
- (ii) in the case of development applications involving building work – before the release of the construction certificate

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- (iii) in the case of development applications involving both subdivision and building work - before the release of the construction certificate or the release of the linen plan/subdivision certificate, whichever occurs first
- (iv) in the case of *development applications where no construction certificate is required* – at the time of issue of notification of consent or prior to commencement of the approved use, or prior to occupation of the premises, as may be determined by Council.

8.2 No contribution will be required where an addition/extension occurs to an existing dwelling (other than in the case of an attached dual occupancy creating an additional dwelling).

8.3 Where a dwelling or dwellings replace an existing dwelling or dwellings on the site, the applicant will be entitled to a credit for existing dwelling or dwellings.

8.4 Where a vacant lot has previously had a Section 94 contribution paid at the time of subdivision, and proof can be shown by the applicant that this contribution has been paid, then the applicant for a subdivision will be entitled to a credit for one lot.

8.5 Where the application is for construction of one or more dwellings on a vacant lot for which a Section 94 contribution has previously been paid, and proof can be shown that this contribution has been paid, then the applicant will be entitled to a credit for one dwelling.

8.6 The amount of the contribution shall be the current rate at the time of payment.

## **9. Can deferred or periodic payments be made?**

9.1 Deferred payment generally will not be accepted by Council. However Council may accept a deferred or periodic payment of a contribution if the applicant or any other person entitled to act upon the relevant consent satisfies Council that:

- (i) compliance with the provisions relating to when contributions are payable is unreasonable or unnecessary in the circumstances of the case and
- (ii) non-compliance with the terms of clause 8 will not increase the cost or prejudice the timing or the manner of providing the facility or service for which the contribution was required as outlined in the works schedule. The decision to accept a deferred or periodic payment is at the sole discretion of Council.

9.2 Council may, if it decides to accept the deferred or periodic payment of a contribution, require the applicant to provide a bank guarantee by an Australian bank for the contribution or the outstanding balance on condition that:

- (i) the guarantee requires the bank to pay the guaranteed amount unconditionally to the consent authority where it so demands in writing, not earlier than six months (or a term determined by Council) from the provision of the guarantee or completion of the development or stage of the development to which the contribution or part relates
- (ii) the guarantee prohibits the bank from:

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- having recourse to the applicant or other person entitled to act upon the consent before paying the guaranteed amount
  - having regard to any appeal, dispute, controversy, issue or other matter relating to the consent or the carrying out of development in accordance with the consent, before paying the guaranteed amount
- (iii) the bank's obligations under the guarantee are discharged:
- when payment is made to the consent authority according to the terms of the bank guarantee
  - if the related consent lapses
  - if the consent authority otherwise notifies the bank in writing that the bank guarantee is no longer required
- (iv) the applicant pays interest to Council on the contribution or the outstanding amount at the overdraft rate on and from the date when the contribution would have been otherwise payable in accordance with clause 8 of this plan.

9.3 Where Council does not require the applicant to provide a bank guarantee, it may require a public positive covenant under Section 88E of the *Conveyancing Act 1919* to be registered on the title to the land to which the relevant development application relates.

### **10. Can 'Works In Kind' (WIK) be undertaken or a material public benefit provided?**

10.1 Council may accept an applicant's offer to make a contribution by way of a WIK contribution (for an item included on the works schedule). It may also accept a material public benefit for an item not included on the works schedule where it considers the acceptance of that material public benefit will not create an unacceptable shortfall in contributions collected which may lead to difficulty in providing other items on the works schedule.

10.2 Council may accept the offer of a WIK if the applicant, or any other person entitled to act upon the relevant consent, satisfies the consent authority that:

- (i) payment of the contribution in accordance with the provisions of the plan is unreasonable or unnecessary in the circumstances of the case
- (ii) the in kind contribution will not prejudice the timing or the manner of the provision of the facility or service for which the contribution was required
- (iii) the value of the works to be undertaken are at least equal to the value and standard of the contribution assessed in accordance with this plan.

10.3 GST is not included in estimating the value of works in kind. If the applicant provides tax invoices for any works in kind Council will reimburse the applicant any GST credited by the Australian Taxation Office.

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## 11. How will the contribution rates be reviewed?

11.1 It is Council policy to review contribution rates to ensure that the monetary contributions reflect the costs associated with the provision of the particular public facility.

11.2 The contribution rate will be reviewed ~~quarterly~~ on the following basis:

(a) for all costs other than land acquisition costs, quarterly by reference to the Consumer Price Index (All Groups) for Sydney published by the ABS;

(b) for land acquisition costs, half yearly by reference to the Housing Price Index – Established House Prices published by the ABS;

11.3 In accordance with Clause 32(3)(b) of the EP&A Regulation, the contribution rates would be indexed in accordance with the following formula:

For changes to the Consumer Price Index (All Groups Index) Sydney, the contribution rates within the plan will be reviewed on a quarterly basis in accordance with the following formula:

$$\text{\$C}_A + \frac{\text{\$C}_A \times (\text{Current Index} - \text{Base Index})}{\text{Base Index}}$$

Where:

**\\$C<sub>A</sub>** is the contribution at the time of adoption of the plan expressed in dollars;

Current Index is the Consumer Price Index as published by the Australian Bureau of Statistics available at the time of review of the contribution rate;

Base Index is the Consumer Price Index as published by the Australian Bureau of Statistics at the date of adoption of this Plan.

Note: In the event that the current index is less than the previous index, the current index shall be taken as not less than the previous index in each case.

For changes to the Housing Price Index – Established House Prices (Sydney), the contribution rates within the plan will be reviewed on a half-yearly basis in accordance with the following formula:

$$\text{\$C}_{LV} + \frac{\text{\$C}_{LV} \times (\text{Current LV Index} - \text{Base LV Index})}{\text{Base Index}}$$

Where:

**\\$C<sub>LV</sub>** is the land values within the plan at the time of adoption of the plan expressed in dollars;

Current LV Index is the land value index as published by the Australian Bureau of Statistics available at the time of review of the contribution rate;

Base LV Index is the land value index as published by the Australian Bureau of Statistics at the date of adoption of this Plan.

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*Note: In the event that the current index is less than the previous index, the current index shall be taken as not less than the previous index in each case.*

- 11.1 Council will continue to monitor land acquisition costs and reserves the right to review rates quarterly should it be deemed appropriate to do so.

## 12. How are contributions adjusted at the time of payment?

- 12.1 The contributions stated in a consent are calculated on the basis of the s94 contribution rates determined in accordance with this plan. If the contributions are not paid within the quarter in which consent is granted, the contributions payable will be adjusted and the amount payable will be calculated on the basis of the contribution rates that are applicable at time of payment in the following manner:

$$\$C_P = \$C_{DC} + \frac{[\$C_{DC} \times (\$C_Q - \$C_C)]}{\$C_C}$$

Where:

$\$C_P$  is the amount of the contribution calculated at the time of payment

$\$C_{DC}$  is the amount of the original contribution as set out in the development consent

$\$C_Q$  is the contribution rate applicable at the time of payment

$\$C_C$  is the contribution rate applicable at the time of the original consent

The current contributions are published by council and are available from council offices. Should the council not validly publish the applicable contribution rates, the rate applicable will be calculated in accordance with the rate prevailing in the previous quarter.

## 13. Are Contributions Payable for Complying Development?

- 13.1 This contributions plan authorises, and requires, the imposition of a condition requiring monetary contributions on any consent for complying development in accordance with the plan. It is the responsibility of the principal certifying authority to accurately calculate and apply the Section 94 contribution conditions where applicable. Likewise, it is the responsibility of any person issuing a construction certificate to certify that the contributions have been paid to Council prior to the issue of the certificate. Deferred payments of contributions required by a condition of a complying development certificate will not be accepted.

## 14. Pooling of Contributions

- 14.1 This plan authorises monetary contributions paid for different purposes to be pooled and applied (progressively or otherwise) for those purposes. The priorities for the expenditure of the contributions are shown in the works schedule where possible, however changing rates of development in different areas may alter those priorities.

## 15. Savings and Transitional Arrangements

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- 15.1 A development application that has been submitted prior to the adoption of this plan but not determined shall be determined in accordance with the provisions of the plan which applied at the date the development application was lodged.

### **16. Monitoring and Review**

- 16.1 It is generally intended that this plan will be comprehensively reviewed at the end of the 5 year period in 2009. This review will be triggered by the full release of census data from the five-yearly census. It is anticipated that data from the 2006 census will be fully released by early 2008 allowing a review to commence during 2008.
- 16.2 While the Council commits to keeping this contributions plan under review, nothing in this contributions plan can be taken as a commitment to adopt any review of this document by any specified date. Nothing in this plan may be read as implying that the plan will cease to operate unless reviewed within any particular period.