

contributions plan

No.15

section 94

Metella Road Floodplain

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1. Introduction and administration of the plan

1.1 Name of the plan

This contributions plan is called 'Section 94 Contributions Plan No.15 – Metella Road Floodplain'.

1.2 Purpose of plan

This contributions plan outlines Council's policy regarding the application of Section 94 (S.94) of the Environmental Planning and Assessment Act, 1979 to the provision of floodplain compensatory works adjacent to the Metella Road and Octavia Street, Toongabbie redevelopment site.

This plan has been prepared in accordance with the Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulation, 2000.

The S.94 contributions contained in this plan have been determined on the basis of a "contribution catchment". This is the area over which a contribution for a particular item is levied. Within the catchment there is an identifiable "list" of works, which are scheduled for provision.

Council applies contribution formulae to each catchment for the purpose of calculating the contribution rate applicable to that catchment. The formulae take into account the cost of works to be undertaken and the size of the catchment area. The cost of providing these works is distributed over the total catchment on an equitable basis.

1.3 Commencement of this plan

This plan takes effect from the date on which public notice was published, pursuant to clause 31 (4) of the EPA Regulation.

1.4 Principles of section 94

Section 94 permits Council to require persons or entities developing land to pay monetary contributions, provide capital works (works in kind), and/or dedicate land in order to help fund the increased demand for public amenities and public services (amenities and services) generated through their developments.

The 3 general principles in applying Section 94 contributions are:

1. a contribution must be for, or relate to, a planning purpose
2. a contribution must fairly and reasonably relate to the subject development
3. the contribution must be such that a reasonable planning authority, duly applying its statutory duties, could have properly imposed.

Council may either:

- require a dedication of land
- a monetary contribution
- material public benefit (works in kind)
- a combination of some or all of the above.

One of the fundamental responsibilities of any Council in imposing S.94 contributions is to ensure that the contributions levied are reasonable. That is, the works and facilities to be provided must be as a direct consequence of the development on which the contributions are levied. In keeping with this responsibility, S.94 contributions levied on development as a result of this plan are limited to providing

amenities and services to the minimum level necessary to sustain an acceptable form of urban development.

1.5 Aims and objectives

The aims and objectives of this Plan are to:

- ensure that s.94 contributions levied on development within the catchment area are reasonable
- ensure that the method of levying s.94 contributions is practical
- ensure that an appropriate level of compensatory works occurs prior to the redevelopment of the Metella Road and Octavia Street site
- make clear council's intentions regarding the location and timing of provision of compensatory works.

1.6 Land to which the plan applies

The land to which this plan applies is shown below.

The land to which this plan applies is not subject to the Minister for Planning and Environment's Section 94E Direction (Schedule 2) which took effect on 28 August 2012.

METELLA ROAD TOONGABBIE FLOODPLAIN CATCHMENT



1.7 Development to which the plan applies

This plan applies to all developments occurring within the catchment area that requires the submission of a development application or an application for a complying development certificate, including the intensification of use of a site involving expansion of area occupied by a development and/or the addition of population.

1.8 Secondary dwellings (granny flats)

A granny flat, or secondary dwelling, is self-contained accommodation within, attached or separate to an individual home. Councils or accredited certifiers can certify granny flats as complying development without the need for a development application, provided they meet the specific development standards in the State Environmental Planning Policy (Affordable Rental Housing) 2009.

To be allowed to build a granny flat as complying development it must be:

- a) Established in conjunction with another dwelling (the principal dwelling),
- b) On the same lot of land as the principal dwelling (and not an individual lot in a strata plan or community title scheme), and
- c) May be within, attached to, or separate from the principal dwelling.

“Granny Flat” is generally defined when assessing development applications as:

- self-contained units of any type which have their own kitchen and bathroom
- self-contained studios
- secondary dwellings under *State Environmental Planning Policy (Affordable Rental Housing) 2009* (AHSEPP)
- fonzie flats
- complying development dual-occupancies.

Note: A bedroom is a room designed or intended for use as a bedroom or any room capable of being adapted to or used as a separate bedroom.

The above list is a guide only. The assessment of development applications determines whether the type of development is subject to section 94 contributions. For avoidance of doubt, secondary dwellings (granny flats) are developments to which this plan applies.

1.9 Construction certificates and the obligation of accredited certifiers

In accordance with section 94EC of the *EP&A Act* and Clause 146 of the *EP&A Regulation*, a certifying authority must not issue a construction certificate for building work or subdivision under a development consent unless it has verified that each condition requiring the payment of monetary contributions has been satisfied.

In particular, the certifier must ensure that the applicant provides a receipt(s) confirming that contributions have been fully paid and copies of such receipts must be included with copies of the certified plans provided to Council in accordance with clause 142(2) of the *EP&A Regulation*. Failure to follow this procedure may render such a certificate invalid.

The only exceptions to the requirement are where a works in kind, material public benefit, dedication of land or deferred payment arrangement has been agreed by Council. In such cases, Council will issue a letter confirming an alternative payment method.

1.10 Complying development and the obligation of accredited certifiers

In accordance with S94EC(1) of the EP&A Act, accredited certifiers must impose a condition requiring monetary contributions in accordance with this contributions plan, which satisfies the following criteria.

The conditions imposed must be consistent with Council's standard section 94 consent conditions and be strictly in accordance with this contributions plan. It is the professional responsibility of accredited certifiers to accurately calculate the contribution and to apply the section 94 condition correctly.

1.11 Relationship to other plans

Other planning controls apply to the areas subject to this Plan. These include:

Local Environment and Development Control Plans

- Blacktown Local Environmental Plan 2015
- Blacktown Development Control Plan 2015.

Please note that the references above relate to other Council Plans. Other infrastructure providers (eg. Integral, Sydney Water, RMS) may require monetary payment for the infrastructure they provide. This list may not include all such providers and in this regard you are advised to make your own detailed enquiries.

Section 94 contribution plans

In addition to this contributions plan, Section 94 Plan No.19 – Blacktown Growth Precinct may also affect the land subject to this Plan.

1.12 The monitoring and review of this plan

This plan will be subject to regular review by Council. Council's Section 94 Finance Committee considers the need for reviews of all of Council's contributions plans when they meet monthly. Council generally aims to have contributions plans reviewed annually in fast-growing release areas. The final review timetable is approved by Council's Strategic Section 94 Committee.

The purpose of any review is to ensure that:

- contribution levels reflect current land and construction costs
- the level of provision reflects current planning and engineering practice and likely population trends
- work schedules are amended if development levels and income received differ from current expectations.

Any changes to the plan must be prepared in accordance with the Act and Regulation and placed on public exhibition for a minimum period of 28 days. The nature of any changes proposed and the reasons for these will be clearly outlined as part of the public participation process. Council welcomes the comments of interested persons in relation to this plan at any time.

1.13 Timing of provision of items

Due to the nature of the adverse effect of redevelopment on the floodplain, the completion the compensatory works are required prior to redevelopment.

1.14 Pooling of funds

This plan authorises monetary Section 94 contributions paid for different purposes to be pooled and applied progressively for those purposes. The priorities for the expenditure of pooled monetary section 94 contributions under this Plan are the priorities for works as set out in the works schedules to this plan.

1.15 Financial information

A separate annual statement is prepared by Council following the end of each financial year. This accounting record contains details of total contributions received, total contributions expended and total interest earned for each plan and is available for inspection free of charge from Council's Finance Section.

1.16 Enquiries regarding this plan

Enquiries in relation to this or any other contributions plan can be made either by phoning Council's Information Centre on 9839 6000 between 8.00 am and 5.30 pm Monday to Friday or by visiting the Information Centre on the Ground Floor of the Civic Centre in Flushcombe Road, Blacktown between 8.00 am to 5.30 pm Monday to Friday.

1.17 Contributions register

A copy of our Contributions Register is also available for inspection free of charge, and can be viewed at the Information Centre. As this register spans many years, persons wishing to view the whole register (rather than details in relation to a particular property) should contact our Contributions team in advance to ensure suitable arrangements can be made to view this information.

2 Compensatory works

2.1 Introduction

The Metella Road Toongabbie area is currently under development pressures for medium-density residential housing. There are safety concerns for residents whose houses would be built in the floodplain, as rapidly rising, fast moving floodwaters would cover the area, cutting residents access to higher level road frontages. Also of major concern is that the additional development in the floodplain may cause levels to rise, increasing the flood risk to neighbouring properties in existing as well as new development.

2.2 Nexus

A direct nexus can be drawn between the re-development of the land to which the plan applies and the need to provide the compensatory works.

This plan seeks to provide works that nullify the effect of redevelopment on the floodplain in three ways.

Reserve floodway

As development proceeds the existing flood storage of the area will be reduced. This reduction is compensated for by the construction of a grassed and landscaped floodway in the reserve between the private properties and Greystanes Creek starting at Octavia Street and Cornelia Road.

Flood relief culverts in Octavia Street

These works involve a combination of lowering about 75m of the road and the installation of flood relief culverts beneath Octavia Street that discharge to the Reserve Floodway mentioned above.

The aim of these works is to get as much water as possible from the local catchment above Metella Road into the reserve floodway by directing the floodwaters away from the existing flow path at No. 19 Octavia Street.

Cornelia Road wetland

The construction of an off-line wetland with a permanent water body adjacent to No. 14 Cornelia Road will provide improvements to water quality flowing from the area of the plan. The proposed wetland will be constructed wholly within the public reserve.

The combination of all three of the abovementioned works will counteract the impacts of development of the land to which the plan applies. If the above works are not undertaken the cumulative effect of development will clearly increase the flood risk on neighbouring properties. In addition, the required works will negate the need for any other flood mitigation works such as on-site detention.

3 Explanation of contribution formula components

3.1 Contribution formula

The following formula is used to calculate the contribution rate. The contribution relates to the compensatory works to the floodplain adjacent to the Metella Road and Octavia Street, Toongabbie redevelopment site.

$$\text{CONTRIBUTION RATE (\$/m}^2\text{)} = \frac{\text{C1} + \text{C2}}{\text{A}} + \text{B}$$

WHERE:

C1= the actual cost to council to date of undertaking works indexed to current day values using the Consumer Price Index (CPI)

C2 = the estimated cost of works yet to be undertaken

A = the total drainage catchment area

B = administrative component, this is 2% of the total cost of providing the works.

3.2 Explanation of the administrative component

The administration of S.94 is an expensive task. Council employs a number of staff that work on planning, designing and constructing works to be funded from S.94 contributions. In addition, consultant studies are often commissioned in order to determine design and costings of S.94 funded works. These may require revision on a regular basis. Also reviews of the demand for services and amenities, particularly the population based items, are conducted approximately every five years.

Council considers that the costs involved with administering S.94 are an integral and essential component of the efficient provision of works. Therefore, some of the costs of full-time staff and studies should be recouped from S.94 contributions.

"B" in the contribution formula is the administrative component. It represents 2% of the cost of constructing the works. Council considers that this small on-cost to recover part of the costs involved in administering S.94 is not unreasonable.

3.3 Explanation of the capital components

Schedules of works to be provided for the various items are detailed in Appendices "A".

In the contribution formula:

C1 - Represents the actual cost to Council of constructing works already provided in the catchment indexed to current day values using the Consumer Price Index (CPI).

C2 - Represents the estimated cost to Council of constructing works, which have yet to be provided in the catchment and are based on the most detailed designs that were available at the time of preparing the estimates.

3.4 Explanation of the catchment areas

The area of the catchment is the total "developable area" in the catchment. In calculating the "developable area", land, which will never be required to pay a contribution, has been excluded. The "exclusions" in this plan relate only to existing development where a credit is allocated. The purpose of identifying these exclusions is to ensure that only the new development (which is generating the need for amenities and services) pays for their provision.

3.5 Indexation

In the formula, previous capital expenditure (C1) is indexed to current day values using the Consumer Price Index - Sydney – All Groups (CPI). This index is published by the Australian Bureau of Statistics on a quarterly basis

The reason for indexing past expenditure is that every developer pays for a small proportion of the cost of providing each individual item identified in the Plan. This means that if / when items are constructed prior to all contributions within a catchment being collected, then "borrowing" (between items) occurs. If retrospective contributions are not indexed this "borrowing" will have occurred without any interest having been paid. This will result in a shortfall of funds when future items are constructed using the "paid back" contributions. What indexing effectively does is to make up the lost interest on the funds that have been borrowed between individual items.

The CPI is one of the indices recommended for use by the Department of Planning and Environment.

3.6 Base contribution rate

A base contribution rate has been calculated using the formula in Section 3.1 above and components are shown in Appendix "B".

This rate is subject to review and indexation. This procedure is outlined in Section 3.5 above.

4 Payment of contributions

4.1 Methods of payment

There are 3 possible methods of payment of S.94 Contributions - monetary contribution, dedication of land and works-in-kind agreements.

Monetary contribution

This is the usual method of payment. When development consent is issued that involves the payment of a S.94 contribution, it contains a condition outlining the amount payable in monetary terms subject to indexation by the CPI. See section 3.5 for more details on indexation.

Dedication of land

As no land is required for the purpose of providing these works, offsetting of contributions via dedication of land is not possible in respect to these contributions.

Works-in-kind agreements

As it is Council's intention to undertake the compensatory works to the floodplain, payment of the contributions via a Works In Kind is not feasible.

4.2 Timing of payment

Council's policy regarding the timing of payment of S.94 contributions is as follows:

Approved under the EP & A Act as it existed pre July 1998

- Development applications involving subdivisions
Prior to the release of the "linen plan" of subdivision
- Development applications involving building work
Prior to release of the Building Permit

Note: Applications for combined building and subdivision approval are required to pay contributions upon whichever of these events occurs first.

- Development applications where no building approval is required
Prior to occupation

Approved under the EP & A Act as amended on and from July 1 1998

- Development applications involving subdivisions
Prior to release of the Subdivision Certificate
- Development applications involving building work
Prior to release of Building Construction Certificate
- Development applications where no building approval is required
Prior to occupation or use of the development

Note: Applications for combined building and subdivision approval are required to pay contributions upon whichever of these events occurs first.

4.3 Credits for existing development

As Section 94 contributions can only be levied where development will result in increased demand, contributions are not sought in relation to demand for urban facilities generated by existing authorised development. Thus “credits” are granted in relation to urban demand generated by existing authorised development.

- a credit of 450m² is applied for existing authorised dwellings that are to be demolished in residential zones
- in other instances a credit relating to the actual area occupied and retained for use by the existing development is generally applied. the credit granted is determined having regard for the individual circumstances
- the area occupied is determined having regard to both the current and previous applications, aerial photos, the area occupied by existing authorised buildings and authorised activities on site.

Residue lots are not levied until they are further developed. In residential zones Council places an 88B restriction on residue lots to deny any further development of the lot until it is further subdivided, consolidated or has a separate development application approval. Contributions are levied upon further subdivision, consolidation or separate development approval

4.4 Indexation of contributions

Contribution rates are indexed quarterly in accordance with the Consumer Price Index - Sydney – All Groups (CPI). See also Section 3.5

The method of indexing the contribution rates is to multiply the base contribution rate by the most recently published CPI at the time of payment and in the case of this version of the Plan, divide it by the June 2017 (111.7).

4.5 Discounting of contributions

Council does not discount contributions both for equity and financial reasons, as it would be inequitable to recoup a discount from remaining development. Discounting would also compromise Council's ability to provide the facilities and would place an additional burden on existing residents to subsidise new development.

4.6 Deferred payment of contributions

Council has a policy for the deferred payment of S.94 contributions as follows:

- an applicant requesting deferred payment needs to apply in writing to Council. All requests are considered on their merits having regard to (but not exclusively) the type of work for which the contribution is sought, the rate of development occurring within the area and the impending need to construct the works for which S.94 Contributions are being levied
- where deferred payment is approved by Council the period of time for deferring payment will generally be limited to 12 months
- if Council approves of the request for deferred payment it is conditional upon the applicant providing a suitable Bank Guarantee and Deed of Agreement
- interest is charged on deferred contributions. Council also charges an administrative fee for deferred payment. The interest rate and administrative fee levied for the deferred payment of

contributions are reviewed annually and appear in Council's Schedule of Fees. A copy of this Schedule is available from Council's Customer Information Centre.

- the amount of the bank guarantee shall be the sum of the amount of contributions outstanding at the time of deferring payment plus the expected "interest" accrued over the deferral period. This amount will also represent the amount payable at the end of the deferral period
- the Deed of Agreement is to be prepared by one of Council's Solicitors at full cost to the applicant. In this regard the applicant is to pay Council's Solicitor's costs direct to the Solicitor and not through Council
- should contributions not be paid by the due date, the bank guarantee will be called up by Council
- Council has a separate deferral policy specifically for dual occupancies, which are to be occupied by elderly and/or disabled persons (i.e. traditional granny flats)
- enquiries regarding deferred payment can be made through contacting the relevant Council officer dealing with the application.

Appendices

APPENDIX A**SCHEDULE OF WORKS – METELLA ROAD TOONGABBIE
FLOODPLAIN**

ITEM	DESCRIPTION	Completed cost Indexed to June 2017
M1	Construction of grassed and landscaped floodway adjacent to Greystanes Creek.	\$1,600,233
M2	Construction of Flood relief culverts and the lowering of Octavia Street.	
M3	Off-line wetland upstream of Cornelia Road.	\$616,450
Total		\$2,216,683

APPENDIX B
SCHEDULE OF VALUES IN THE CONTRIBUTION FORMULA

CATCHMENT	SIZE OF CATCHMENT (sqm)	C1 (\$)	C2 (\$)	C1+C2 (\$)
METELLA ROAD FLOODPLAIN	23,802	2,216,683		\$2,216,683

BASE CONTRIBUTION RATE

Base CPI June -111.7

ITEM	CONTRIBUTION RATE (\$ per sqm)
METELLA ROAD FLOODPLAIN	\$95

APPENDIX C

Supporting technical documents and reports

The following study has been used for researching this contributions plan:

- Metella Road Toongabbie Floodplain Risk Management Study and Plan

Bewsher Consulting Pty Ltd September 2002