



Section 94A Development Contributions Plan

ADOPTED BY MOREE PLAINS SHIRE COUNCIL
ON FRIDAY 5TH MAY 2006

As amended on 20th May, 2007

Moree Plains Shire Council

SECTION 94A CONTRIBUTIONS PLAN FOR THE COUNCIL OF THE SHIRE OF MOREE PLAINS

1.1 What is the name of this plan?

This contributions plan is called the **Moree Plains Contributions Plan 2006 (Plan)**.

1.2 Application of this plan

This plan applies to all land within the local government area of **Moree Plains Shire**.

1.3 Development to which this plan applies

This Plan applies to applications for development consent and applications for complying development certificates to be made by or under Part 4 of the *Environmental Planning and Assessment Act, 1979 (Act)* in respect of development on land to which the Plan applies.

1.4 What is the purpose of this contributions plan?

The primary purposes of this Plan are:

- to authorise the imposition of a condition on certain development consents requiring the payment of a levy determined in accordance with this Plan
- to require a certifying authority (the Council or an accredited certifier) to impose, as a condition on a complying development certificate, a requirement that the applicant pay to the Council a levy determined in accordance with this Plan
- to govern the application of money paid to the Council under a condition authorised by this Plan
- to assist the council to provide the appropriate public amenities and services required to maintain and enhance amenity and service delivery within the Area

1.5 When does this contributions plan commence?

This contributions plan commences on Friday 5th May 2006.

1.6 Continuation of existing contributions plan

This Plan does not amend or repeal any s94 plans applying to land in the Area, and any such plans continue to apply to all development to which they are stated to apply.

1.7 What is the relationship between the expected types of development in the Area and the demand for additional public amenities and services to meet that

development?

For the purposes of clause 27(1)(c) of the *Environmental Planning and Assessment Regulation 2000*, the relationship between the expected development in the Area and the demand for additional public amenities and services to meet that development is broadly as follows:

- The household creation projections undertaken by Moree Plains Shire Council indicate likely growth of 66 new households per year.
- The likely population growth will require the provision, augmentation or extension of public amenities and services.
- The likely population growth will diminish the existing population's enjoyment and the standard of existing public amenities and services in the Area.

1.8 Council may require payment of the levy as a condition of development consent

Subject to any direction of the Minister under section 94E of the Act which is in force from time to time, this Plan authorizes the Council to grant consent to development to which this Plan applies subject to a condition requiring the applicant to pay to the Council a levy of 1% of the proposed cost of carrying out the development, *provided that* the Council does not also impose on the consent a condition pursuant to section 94 of the Act.

If a Ministerial direction under section 94E is in force, this Plan authorizes the Council to grant consent to development subject to a condition which is in accordance with that direction.

Any Ministerial direction under section 94E of the Act which has been made and is in force from time to time is included in the Attachment to this Plan.

1.9 Certifying authority must require payment of the levy as a condition of issuing a complying development certificate

Subject to any direction of the Minister under section 94E of the Act which is in force from time to time, this Plan requires a certifying authority (the Council or an accredited certifier) to issue a complying development certificate in respect of development to which this Plan applies subject to a condition requiring the applicant to pay to the Council a levy of 1% of the proposed cost of carrying out the development.

If a Ministerial direction under section 94E is in force, this Plan authorizes the certifying authority to issue a complying development certificate subject to a condition which is in accordance with that direction.

Any Ministerial direction under section 94E of the Act which has been made and is in force from time to time is included in the Attachment to this Plan.

1.10 How will the Council apply money obtained from the levy?

Money paid under a condition authorized by this Plan is to be applied by the Council towards meeting the cost of the public amenities and public services that will be or have been provided within the Area as listed in the Works Schedule in Schedule 1.

A map showing the specific public amenities and services proposed to be provided is contained in Schedule 3.

Subject to s.93E(2) of the Act and clause 1.12, the public amenities and public services listed in Schedule 1 are to be provided in accordance with the staging set out in that Schedule.

1.11 Are there any exemptions from the levy authorised by this Plan?

Council may exempt the following kinds of developments from the levy authorised to be imposed under this Plan:

- a development by a registered charity, community organisation or service club that will, in the opinion of the Council, provide a material public benefit to the Moree community.

For such claims to be considered, any such development will need to include a comprehensive submission arguing the case for an exemption and include details of the mechanism ensuring that such development is, and will remain in the form proposed.

1.12 Pooling of levies

For the purposes of s93E(2) of the Act, this Plan authorises s94A levies paid for different purposes to be pooled and applied (progressively or otherwise) for those purposes in accordance with the priorities set out in the Works Schedule in Schedule 1.

1.13 Construction certificates and obligations of accredited certifiers

In accordance with clause 146 of the *Environmental Planning and Assessment Regulation 2000*, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it has verified that each condition requiring the payment of levies has been satisfied.

In particular, the certifier must ensure that the applicant provides a receipt(s) confirming that levies have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the council in accordance with clause 142(2) of the 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 the council. In such cases, council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

1.14 How is the proposed cost of carrying out the development determined?

The proposed cost of carrying out the development will be determined by the Council in accordance with clause 25J of the *Environmental Planning and Assessment Regulation 2000*.

The procedures set out in Schedule 2 to this Plan must be followed to enable the Council to determine the amount of the levy that is payable.

Council may review the valuation of works and may seek the services of an independent person to verify the costs. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant.

1.15 When is the levy payable?

The Council's policy is that levy must be paid to the Council at the time specified in the condition that imposes the levy.

If no such time is specified, the Council's policy is that the levy must be paid prior to the issue of a construction certificate or complying development certificate.

1.16 How will the levy be adjusted?

Contributions required as a condition of consent under the provisions of this Plan will be adjusted at the time of payment in accordance with the following formula:

$$\text{Contribution at time of payment} = \$Co + A$$

Where

\$ Co is the original levy as set out in the consent

A is the adjustment amount which is
$$= \frac{\$Co \times ([\text{Current Index} - \text{Base Index}])}{[\text{Base Index}]}$$

Where

Current Index - Consumer Price Index is the Consumer Price Index, All Groups, Sydney as published by the Australian Bureau of Statistics in respect of the quarter ending immediately prior to the date of payment;

**Base Index -
Consumer Price
Index**

is the Consumer Price Index, All Groups, Sydney as published by the Australian Bureau of Statistics in respect of the quarter ending immediately prior to the date of imposition of the condition.

Note: In the event that the Current Consumer Price Index, All Groups, Sydney is less than the Base Consumer Price Index, All Groups, Sydney, the Current Consumer Price Index, All Groups, Sydney shall be taken as not less than the Base Consumer Price Index, All Groups, Sydney

1.17 Can deferred or periodic payments be made?

Deferred or periodic payment of the levy may be permitted in the following circumstances:

- deferred or periodic payment of the contribution will not prejudice the timing or the manner of the provision of public amenities and services included in the works schedule,
- in other circumstances considered reasonable by Council.

If Council does decide to accept deferred or periodic payment, it may require the applicant to provide a bank guarantee by a bank for the full amount of the contribution or the outstanding balance on condition that:

- the bank guarantee be by a bank for the amount of the total contribution (or the amount of the outstanding contribution) plus interest on the outstanding amount calculated at the Council's standard overdraft rate, plus any charges associated with establishing or operating the bank security;
- the bank guarantee provides for payment of the guaranteed sum (or any part of it) to the council unconditionally if the Council so demands in writing;
- the bank must pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development;
- the bank's obligations are only discharged when full payment to the Council of the guaranteed sum has been made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required; and
- the bank guarantee is deposited with the Council.

1.18 Are there alternatives to payment of the levy?

If an applicant for development consent seeks to make a contribution towards the provision of public amenities and services to meet development other than by payment of a levy or development contributions, the applicant may adopt one of the following procedures.

- ***Offer made to the Council as part of a development application***

If an applicant does not wish to pay a levy other contributions in connection with the carrying out of development, the applicant may include in the relevant development application an offer to carry out works or provide a material public benefit towards which the levy was to be applied.

The Council will consider the offer as part of its assessment of the development application. If the Council agrees to the arrangement and grants consent to the application, it will substitute a condition of consent under s80A of the Act requiring the works (**works-in-kind**) to be carried out or the material public benefit to be provided for a condition requiring payment of a levy under s94A or development contributions under s94. If the Council does not agree to the alternative arrangement, it may grant consent subject to a condition authorised by this Plan requiring the payment of a levy.

In assessing the applicant's offer, the Council will have regard to the requirements of the current Practice Note issued by the NSW Government in the *Revised Development Contributions Manual* (DIPNR 2005) and may consider matters such as, but not limited to, the following:

- the overall benefit of the proposal,
- the monetary value of the material public benefits, or work in kind,
- what needs of the population would be satisfied and whether these equal or exceed those provided by conventional means,
- whether the works program in the adopted development contributions plan remains valid or requires amendment,
- the financial implications for cash –flow and the short-fall in anticipated contributions,
- the timing of completion and future recurrent costs,
- future dedication, handover and management arrangements.

- ***Offer made to Council following the grant of development consent requiring payment of a levy***

If development consent has been granted to the carrying out of development subject to a condition authorised by this Plan to pay a levy, the applicant must comply with the condition unless it is modified under s96 of the Act.

If the applicant does not wish to pay the levy, the applicant may make an application to the Council under s96 of the Act to modify the consent by substituting for the condition requiring payment of the levy a condition requiring the carrying out of works or the provision of a material public benefit towards the public purpose to which the levy was to be applied.

If the Council approves the application, the applicant will be bound by the substituted condition. If the Council does not approve the application, the applicant will remain bound by the condition authorised by this Plan requiring payment of the levy.

In assessing the s96 application, the Council will have regard to the requirements of the current Practice Note issued by the NSW Government in the *Revised Development Contributions Manual* (DIPNR 2005) and may consider matters such as, but not limited to, the following:

- the overall benefit of the proposal,
- the monetary value of the material public benefits, or work in kind,
- what needs of the population would be satisfied and whether these equal or exceed those provided by conventional means,
- whether the works program in the adopted development contributions plan remains valid or requires amendment,
- the financial implications for cash –flow and the short-fall in anticipated contributions,
- the timing of completion and future recurrent costs,
- future dedication, handover and management arrangements.

- *Offer to enter into a voluntary planning agreement*

If an applicant does not wish to pay a levy or development contributions in connection with the carrying out of development, the applicant may offer to enter into a voluntary planning agreement with the Council under s93F of the Act in connection with the making of a development application.

Under the planning agreement, the applicant may offer to pay money, dedicate land, carry out works, or provide other material public benefits for public purposes. Those purposes need not relate to the impacts of the applicant's development nor to the items listed in Schedule 1.

The applicant's provision under a planning agreement may be additional to or instead of paying a levy in accordance with a condition of development consent authorised by this Plan. This will be a matter for negotiation with the Council.

The offer to enter into the planning agreement together with a copy of the draft agreement should accompany the relevant development application.

The Council will publicly notify the draft planning agreement and an explanatory note relating to the draft agreement along with the development application and will consider the agreement as part of its assessment of that application.

If the Council agrees to enter into the planning agreement, it may impose a condition of development consent under s93I(3) of the Act requiring the agreement to be entered into and performed. If the Council does not agree to enter into the planning agreement, it may grant consent subject to a condition authorised by this Plan requiring the payment of a levy.

Applicants should refer to the Council's *Policy on Planning Agreements*, which has been prepared having regard to the Practice Note on Planning Agreements contained in the *Revised Development Contributions Manual* (DIPNR 2005).

Dictionary

In this Plan, unless the context or subject matter otherwise indicates or requires, the following definitions apply:

“Applicant” means the person submitting a development application.

Act means the Environmental Planning and Assessment Act 1979,

Council means Moree Plains Shire Council,

development contributions means a development contribution required to be paid by a condition of development consent imposed pursuant to section 94 of the Act,

levy means a levy under s94A of the Act authorised by this plan,

Minister means the Minister administering the Act,

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

s94 plan means a contributions plan made pursuant to section 94B of the Act

SCHEDULE 1 (Clause 1.10)**Works Schedule****A. Completed works for which contributions will be recouped**

NIL

B. Works in progress for which contributions will continue to be levied

NIL

C. New Public facilities for which contributions will be sought

Public Facilities	Estimated Cost	Estimated Staging	Priority High(H) Medium(M) Low (L)
Community facility – self cleaning style public toilet within the Moree Central Business District (CBD), central CBD area	\$100,000.00	2006	H
Community facility – self cleaning style public toilets within the northern section of Moree Central Business District (CBD) at Lyle Kirkby Park, Moree	\$100,000.00	2006	H
Community facility – self cleaning style public toilet at Kirkby Park, Balo Street, Moree	\$100,000.00	2006/ 2007	M
Community facility – self cleaning style public toilet at Golf Club/ Mike Shaw Parks, Greenbah Road, Moree	\$100,000.00	2007/ 2008	M
Community facility – self cleaning public toilet at Apex Park, Edward Street, Moree	\$100,000.00	2007/ 2008	L
Community facility – self cleaning style public toilet at Jellico Park, Alice Street, Moree	\$100,000.00	2008	L
Open space embellishment, playground equipment and safety upgrades for Apex and Kirkby Parks	\$80,000.00	2007/08	L

SCHEDULE 2 (Clause 1.14)

Procedure

A cost summary report may be required to be submitted to allow Council to determine the contribution that will be required.

The following procedures as outlined below will be used by Council:

- (1) Where Council does not accept a submitted estimate of the value of works, Council may require a cost summary report to be completed for works with a value no greater than \$250,000.00 (**Form 1**).

Alternatively, for a single dwelling, Council may accept a signed contract with a licensed builder which is accompanied by a fair estimate of other assessable development costs not included in the building contract, such as landscaping, paths, fences, driveway and the like.

- (2) Where Council does not accept a submitted estimate of the value of works, Council may require a Quantity Surveyor's Detailed Cost Report to be completed by a registered Quantity Surveyor for works with a value greater than \$250,000.00 (**Form 2**).

How to Calculate Value of Works

To avoid doubt or confusion in the calculation of the value of works or construction costs, clause 25J of the Environmental Planning and Assessment Regulation 2000 sets out the things that must be included in the estimation of the value of works as follows:

25J Section 94A levy—determination of proposed cost of development

- (1) The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 94A levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:
 - (a) if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,
 - (b) if the development involves a change of use of land—the costs of or

incidental to doing anything necessary to enable the use of the land to be changed,

- (c) if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.

(2) For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.

(3) The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:

- (a) the cost of the land on which the development is to be carried out,
- (b) the costs of any repairs to any building or works on the land that are to be retained in connection with the development,
- (c) the costs associated with marketing or financing the development (including interest on any loans),
- (d) the costs associated with legal work carried out or to be carried out in connection with the development,
- (e) project management costs associated with the development,
- (f) the cost of building insurance in respect of the development,
- (g) the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),
- (h) the costs of commercial stock inventory,
- (i) any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law.

SCHEDULE 3 (Clause 1.10)

Map

SAMPLE COST SUMMARY REPORT

Cost Summary Report
[Development Cost no greater than 250,000.00]

DEVELOPMENT APPLICATION No. REFERENCE:

CONSTRUCTION CERTIFICATE No. DATE:

APPLICANT'S NAME:

APPLICANT'S ADDRESS:

DEVELOPMENT NAME:

DEVELOPMENT ADDRESS:

ANALYSIS OF DEVELOPMENT COSTS:

Demolition and alterations	\$	Hydraulic services	\$
Structure	\$	Mechanical services	\$
External walls, windows and doors	\$	Fire services	\$
Internal walls, screens and doors	\$	Lift services	\$
Wall finishes	\$	External works	\$
Floor finishes	\$	External services	\$
Ceiling finishes	\$	Other related work	\$
Fittings and equipment	\$	Sub-total	\$
Sub-total above carried forward	\$		
Preliminaries and margin	\$		
Sub-total	\$		
Consultant Fees	\$		
Other related development costs	\$		
Sub-total	\$		
Goods and Services Tax	\$		
TOTAL DEVELOPMENT COST	\$		

I certify that I have:

- inspected the plans the subject of the application for development consent or construction certificate.
- calculated the development costs in accordance with the definition of development costs in clause 25J of the *Environmental Planning and Assessment Regulation 2000* at current prices.
- included GST in the calculation of development cost.

Signed: _____

Name: _____

Position and Qualifications:

Date: _____

Form 2

SAMPLE QUANTITY SURVEYORS REPORT

Registered* Quantity Surveyor's Detailed Cost Report
[Development Cost in excess of \$250,000.00]

*A member of the Australian Institute of Quantity Surveyors

DEVELOPMENT APPLICATION No. REFERENCE:

CONSTRUCTION CERTIFICATE No. DATE:

APPLICANT'S NAME:

APPLICANT'S ADDRESS:

DEVELOPMENT NAME:

DEVELOPMENT ADDRESS:

DEVELOPMENT DETAILS:

Gross Floor Area – Commercial	m ²	Gross Floor Area – Other	m ²
Gross Floor Area – Residential	m ²	Total Gross Floor Area	m ²
Gross Floor Area – Retail	m ²	Total Site Area	m ²
Gross Floor Area – Car Parking	m ²	Total Car Parking Spaces	
Total Development Cost		\$	
Total Construction Cost		\$	
Total GST		\$	

ESTIMATE DETAILS:

Professional Fees	\$	Excavation	\$
% of Development Cost	%	Cost per square metre of site area	\$ ² /m
% of Construction Cost	%	Car Park	\$
Demolition and Site Preparation	\$	Cost per square metre of site area	\$ ² /m
Cost per square metre of site area	\$ ² /m	Cost per space	\$/space
Construction – Commercial	\$	Fit-out – Commercial	\$
Cost per square metre of site area	\$ ² /m	Cost per m ² of commercial area	\$ ² /m
Construction – Residential	\$	Fit-out – Residential	\$
Cost per square metre of residential area	\$ ² /m	Cost per m ² of residential area	\$ ² /m
Construction – Retail	\$	Fit-out – Retail	\$
Cost per square metre of retail area	\$ ² /m	Cost per m ² of retail area	\$ ² /m

I certify that I have:

- inspected the plans the subject of the application for development consent or construction certificate.
- prepared and attached an elemental estimate generally prepared in accordance with the Australian Cost Management Manuals from the Australian Institute of Quantity Surveyors.
- calculated the development costs in accordance with the definition of development costs in the S94A Plan adopted by Moree Plains Shire Council on the 5th May 2006, at current prices.
- included GST in the calculation of development cost.
- measured gross floor areas in accordance with the Method of Measurement of Building Area in the AIQS Cost Management Manual Volume 1, Appendix A2.

Signed: _____
Name: _____
Position and Qualifications: _____
Date: _____

ATTACHMENT

Environment and Planning Assessment Act 1979

DIRECTION UNDER SECTION 94E

I, the Minister for Planning, under section 94E of the *Environmental Planning and Assessment Act 1979* ("the Act"), direct consent authorities that:

- (1) The maximum percentage of the levy for development under section 94A of the Act, having a proposed cost within the range specified in the Table to Schedule A, is to be calculated in accordance with that Table.
- (2) Despite subclause (1), a levy under section 94A of the Act cannot be imposed on development:
 - a) for the purpose of disabled access,
 - b) for the sole purpose of affordable housing,
 - c) for the purpose of reducing the consumption of mains-supplied potable water, or reducing the energy consumption of a building,
 - d) for the sole purpose of the adaptive reuse of an item of environmental heritage, or
 - e) other than the subdivision of land, where a condition under section 94 of the Act has been imposed under a previous development consent relating to the subdivision of the land on which the development is proposed to be carried out.

In this direction words and expressions used have the same meaning as they have in the Act. The terms "item" and "environmental heritage" have the same meaning as in the *Heritage Act 1977*.

This direction does not apply to development applications and applications for complying development certificates finally determined before 1 December 2006.

FRANK SARTOR, M.P.,
Minister for Planning,
Sydney.

SCHEDULE A

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001 - \$200,000	0.5 percent
More than \$200,000	1.0 percent