

LEETON SHIRE COUNCIL - ADDENDUM REPORT TO PROVIDE JUSTIFICATION FOR CONDITION NO 14 REGARDING DEVELOPER CONTRIBUTIONS AND FEES

APPLICATION SUMMARY DETAILS

Development Application No:	PAN 264302 DA101-2022
Land Title:	Lot 1 DP 795500
Address:	259 Euroley Road, Yanco, NSW 2730
Land Area:	176.54 hectares
Description of Development:	Alterations and additions to existing educational establishment, comprising: <ul style="list-style-type: none">○ Site preparation works including removal of ten (10) existing trees;○ Construction of a two (2) storey boarding facility containing 84 student and two (2) staff beds;○ Refurbishment of five (5) existing dormitory buildings; and○ Landscaping including the planting of 17 new trees.
Applicant:	School Infrastructure NSW (SI NSW)
Landowner's consent provided:	Yes – SI NSW
Local Government Authority:	Leeton Shire Council
Determining Authority:	Western Regional Planning Panel

OVERVIEW

On the 27th March 2023, Leeton Shire Council provided School Infrastructure NSW (SI NSW) with a set of draft conditions to apply to a proposed Crown development; being alterations and additions to accommodation facilities at the Yanco Agricultural High School (YAHS).

On 5th April 2023, SI NSW provided a response to the draft conditions requesting several amendments, including the deletion of draft Condition 16 dealing with the imposition of a monetary contribution under the Leeton Shire Council Section 94A Fixed Levy Plan 2016.

Leeton Shire Council consequently made all requested changes to draft conditions, except for draft Condition 16 (now Condition 14 in the updated draft conditions suite) dealing with community contributions. In dealing further with SI NSW Leeton Shire Council has advised it would reduce the amount of contribution payable to reflect the estimated construction costs for the new female dormitory building only.

To date, SI NSW have maintained their advice that they are not prepared to accept any condition requiring payment under Council's Section 94A Fixed Levy Plan 2016.

The purpose of this report is to provide the Western Regional Planning Panel with the reasons why the imposition of the Condition 14 relating to community contributions is

appropriate in the circumstances of DA101-2022 for YAHS proposed alterations and additions.

Unlike other school infrastructure assets in NSW, YAHS is an isolated boarding high school that relies heavily on the townships of Yanco and Leeton for the provision of community facilities and services beyond what is provided at the school grounds. Throughout the week and especially during weekends there are many students using the facilities provided by Leeton Shire Council with its network of parklands, community facilities such as the Roxy Community Theatre and throughout the active transport network.

All of these facilities require substantial investment and maintenance, and the application of a broad levy across all new developments in accordance with Council's Section 94A Fixed Levy Plan 2016 is accepted best practice by Leeton Shire Council and the wider Leeton Shire community.

Without a fair and equitable contribution from SI NSW, private developers and the wider community through rates must be burdened with the costs of maintaining services for a large group of student residents at YAHS.

CONDITION 14 DETAILS

Draft Condition 14 in the Assessment Report currently reads as follows:

Contributions and Fees

14. In accordance with the Leeton Shire Council Section 94A levy Plan 2016, the applicant shall pay the following Section 7.12 monetary contribution only for the new build:

*a) Amount of Contribution - **\$117,430.00** (1% of development cost).*

b) Timing and Method of Payment - The contribution shall be paid in the form of cash, credit or bank cheque made out to Leeton Shire Council. Evidence of payment to Leeton Shire Council shall be submitted to the Principal Certifying Authority prior to the release of the Completion Certificate.

c) Indexing - The contributions will be adjusted in accordance with the requirements of the Leeton Section 94A Levy Plan.

{Reason: To meet the demands for public services and facilities as a result of the development within the Leeton Shire}

SCHOOL INFRASTRUCTURE NSW POSITION

SI NSW provided the following commentary, on the 5th April 2023, in relation to the condition requiring a developer contribution under Leeton Shire Council's S 94 A Fixed Levy Plan, now known as Section 7.12 Plan.

"We recognise the site is covered by the Leeton Shire Council Section 94A Fixed Levy Plan, April 2016 (the Plan), now known as Section 7.12 plans. The purpose of the Plan is to assist council to provide the appropriate public facilities which are required to maintain and enhance amenity and service delivery within the area, and the Plan applies to all land in the Leeton Shire.

Whilst the Plan does not expressly exclude Crown Developments or educational establishments from the payment of contributions, an exemption is considered appropriate in this instance. The DoE is a government agency which relies on government funding to provide new facilities for the school community. The levying of a development contribution

would divert a portion of these public funds, which have been specifically provided to the fund upgrade ageing school infrastructure, to local services without any direct nexus to the impact on those services.

We note that the Department of Planning's practice note for Section 7.12 fixed development consent levies (February 2021) states that whilst it is at the discretion of council, educational establishments is listed as a regular type of development that is exempt from the payment of contributions.

Further, this approach is consistent with the advice from DPE in Circular D6 Crown Development Applications and Conditions of Consent. This circular notes that Crown activities provide facilities which lead to significant benefits for the public in terms of essential community services and employment opportunities, and the activities are not likely to require the provision of public services and amenities in the same way as development undertaken with a commercial objective.

The circular recommends that, where the applicant is a Crown authority and the development is for educational services, no contributions should be collected for open space, community facilities, parking, and general local and main road upgrades. As the proposal provides for social infrastructure on behalf of the Crown, it should not be subject to development contributions. The nature of the development means that the infrastructure which council typically seeks to levy for, will in part be provided by the school for use by students and staff. We note that the proposed development does not seek to increase student or staff numbers, but to deliver enhanced learning outcomes for students, notably with improved accommodation.

For the reasons outlined above, exemption from the payment of development contributions is considered appropriate and we request that condition 16 is deleted.'

JUSTIFICATION FOR DEVELOPER CONTRIBUTIONS

Leeton Shire Council is of the opinion that the developer contribution payable under the current S 94A Fixed Levy Plan is justified and reasonable for the following reasons:

- a. Council's S 94 A plan, in Part A, clause 1, identifies development of education facilities as a form of development that will increase the expected demand for public facilities. For this reason, schools and education facilities were not exempted from paying developer contributions under this plan. Exemption from the S94A plan is not a given and cannot be assumed.
- b. The Statement of Environmental Effects for this DA application considered many relevant matters, however, the issue of developer contributions was not considered in the Statement of Environmental Effects or formally put to Council for negotiation. This is a very important aspect to be considered by the applicant. For example, the Department for Planning released Industry-specific SEARs for State Significant School Development. The Industry Specific SEARs for Schools specifically require the applicant, SI NSW, to consult with Councils about developer contributions. Please refer to clause 25 in attached SEARs for schools. The same principal applies to local and regional development.
- c. SI NSW commentary referred to the contents of circular D6 (attached as appendix B), released 21 September 1995, which deals with Crown Development Applications and Conditions of Consent. This argument from the Crown is invalid and not applicable as Circular D6 referred to Section 94 Infrastructure

Contributions and not Section 94A Fixed Levy Contributions or S7.12 in the current version of the *EPA Act 1993*.

- d. Leeton Shire Council provides and maintain public infrastructure such as parks and gardens, library, public swimming pool, sport stadiums, outdoor gym etc and is available to all residents of the Leeton Shire, inclusive of students from Yanco Agricultural High School. These facilities are enjoyed by students on a regular basis. SI NSW stated above that *“The levying of a development contribution would divert a portion of these public funds, which have been specifically provided to the fund upgrade ageing school infrastructure, to local services without any direct nexus to the impact on those services.”*
- e. YAHS is a selective agricultural high school emphasising the study of agriculture. The school has a mix of weekly and full-time boarding students. There are no day students at Yanco Agricultural High School. Most of the students are from outside the Leeton Shire, hence the contributions applicable to this development application will be very helpful to assist Leeton Shire Council to provide public facilities for all, including students from Yanco Agricultural High School.
- f. Leeton Shire Council’s S94A Fixed Levy Plan is a valid contributions plan. This plan is not contradicting any legislation nor is it ultra vires with any applicable NSW legislation.
- g. The draft Leeton Shire Council Active Transport plan identifies a shared pathway connecting the Yanco Agricultural High School with Yanco. Developer contributions will assist Leeton Shire Council to accomplish projects like this.

RECOMMENDATION

It is recommended that the Western Regional Planning Panel indicate its intention to include Condition 14 in the final determination of DA101-2022 for YAHS alterations and additions.

Leeton Shire Council raises no issue with the final determination being made by the Minister for Planning in accordance with Section 4.33(1)(a) of the Environmental Planning and Assessment Act 1979 or as a Deferred Commencement Consent Condition to allow the NSW Planning Minister to review the matter and provide a final determination.