



## **SECTION 94 DEVELOPMENT CONTRIBUTIONS**

### **PLAN NO 10**

## **FOR THE PROVISION OF KINGS HIGHWAY CULVERTS AT SOUTH BUNGENDORE**



**ADOPTED BY COUNCIL :  
THIS PLAN CAME INTO EFFECT ON:**

**27 SEPTEMBER 2007  
10 OCTOBER 2007**

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# SECTION 94 PLAN NO 10 FOR THE PROVISION OF KINGS HIGHWAY CULVERTS AT SOUTH BUNGENDORE

## 1. SUMMARY

This Contributions Plan has determined contributions as indicated below towards the provision of upgraded culvert systems under the Kings Highway at south Bungendore valued at \$420,000.

The adopted contributions which will be subject to cost adjustment each quarter have been determined as follows, based on the expected area of impervious footprint that will result from the various possible development types:

### SCHEDULE OF CONTRIBUTIONS

For Subdivisions	\$2,100 per lot
For Other Development Types	\$2,100 x DIF/400 Where DIF is the proposed development's impervious footprint

## **2. ADMINISTRATION AND OPERATION OF THE PLAN**

### **2.1 What is the name of this plan?**

The name of this Plan is **Palerang Council Section 94 Development Contributions Plan No 10 for the Provision of Highway Culverts at south Bungendore**

### **2.2 Where does this Plan apply?**

This plan applies to all land within the drainage catchment bounded by King Street, the railway line, Trucking Yard Lane and the Kings Highway as depicted on Attachment 1.

### **2.3 What is the purpose of this development contributions plan?**

The purpose of this Plan is to:

- (a) provide an administrative framework and ensure that adequate public facilities are provided as part of any new development
- (b) to authorise the council to impose conditions under section 94 (s94) of the *Environmental Planning and Assessment Act 1979* when granting consent to development on land to which this plan applies
- (c) provide a comprehensive strategy for the assessment, collection, expenditure accounting and review of development contributions on an equitable basis
- (d) ensure that the existing community is not burdened by the provision of public amenities and public services required as a result of future development
- (e) enable the council to be both publicly and financially accountable in its assessment and administration of the development contributions plan.

### **2.4 What is the specific objective of this Plan?**

The specific objective of this Plan are to ensure that new developments pay a fair and reasonable contribution towards upgraded culvert systems under the Kings Highway that are necessary to cater from stormwater flows that will accumulate from the catchment above and need to be conveyed to the creek system downstream to the west.

## 2.5 Commencement of the plan

This Plan has been prepared pursuant to the provisions of s94 of *the EP&A Act* and Part 4 of the *EP&A Regulation* and takes effect from the date on which public notice was published, pursuant to clause 31(4) of the *EP&A Regulation*.

## 2.6 Relationship with other plans and policies

This development contributions plan supplements the provisions of the Yarrolumla Local Environmental Plan 2002 and any subsequent amendments.

## 2.7 Definitions

<i>Applicant</i>	Means the person, company or organisation submitting a development application.
<i>Community facility</i>	Means a building or place owned or controlled by the Council or a body of persons which may provide for the physical, social, cultural or intellectual development or welfare of the local community, but does not include a building or place elsewhere defined in this section.
<i>Contribution</i>	Means the dedication of land, the making of a monetary contribution or the provision of a material public benefit, as referred to in Section 94 of the EP&A Act.
<i>Contributions Plan</i>	Means a contributions plan referred to in Section 94EA of the EP&A Act.
<i>Council</i>	Means the Palerang Council
<i>EP&amp;A Act</i>	Means the Environmental Planning and Assessment Act, 1979, as amended.
<i>EP&amp;A Regulations</i>	Means the Environmental Planning and Assessment Regulation, 2000, as amended.
<i>LEP</i>	Means the local environment plan for the area made by the Minister under Section 70 of the EP&A Act.
<i>LGA</i>	Means the Local Government Area.
<i>Public Facilities</i>	Means any public amenity or public service as referred to in Section 94 of the EP&A Act, including a Community Facility and a Recreation Facility, the need for which has increased or been created by Development.

<i>Recreation Facility</i>	Means a building or place used for sporting activities, recreation or leisure activities, whether or not operated for the purpose of gain, but does not include a building or place elsewhere defined in this section.
<i>Recoupment</i>	Means payment of a monetary contribution to the Council to offset the cost (plus any interest) which the Council has already incurred in providing public facilities in anticipation of development.
<i>Settlement</i>	Means the payment of a monetary contribution, the undertaking of a work in kind, or the exchange of documents for the dedication of land required as a result of new development.
<i>Works in Kind</i>	Has the same meaning as a 'Material Public Benefit' as referred to in Section 94(5)(b) of the EP&A Act and means the undertaking of any work associated with the provision of a public facility.
<i>Works Program</i>	Means the schedule of the specific public facilities for which contributions may be required, and the likely timing of provision of those public facilities based on projected rates of development, the collection of development contributions and the availability of funds from supplementary sources.

## **2.8 When is the contribution payable?**

A contribution must be paid to the council at the time specified in the condition that imposes the contribution. If no such time is specified, the contribution must be paid as follows:

- (a) For DAs involving subdivision - prior to the release of the subdivision linen plan (i.e, issue of subdivision certificate)
- (b) For DAs involving building works – prior to the issue of a construction certificate
- (c) For DAs where no building work is involved – prior to occupation or commencement of the approved development.

## **2.9 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 work 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 the 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 the council. In such cases, council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

## **2.10 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 development contributions plan.

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

## **2.11 Deferred/periodic payments**

Deferred or periodic payments may be permitted in the following circumstances:

- (a) compliance with the provisions of Clause 2.8 is unreasonable or unnecessary in the circumstances of the case,
- (b) deferred or periodic payment of the contribution will not prejudice the timing or the manner of the provision of public facilities included in the works program,
- (c) where the applicant intends to make a contribution by way of a planning agreement, works-in-kind or land dedication in lieu of a cash contribution and council and the applicant have a legally binding agreement for the provision of the works or land dedication,
- (d) there are circumstances justifying the deferred or periodic payment of the contribution.

If council does decide to accept deferred or periodic payment, council 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 an amount equal to thirteen (13) months interest plus any charges associated with establishing or operating the bank security,

- the bank unconditionally pays the guaranteed sum to the council if the council so demands in writing not earlier than 12 months from the provision of the guarantee or completion of the work
- 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 discharged when payment to the council is made in accordance with this guarantee or when council notifies the bank in writing that the guarantee is no longer required
- where a bank guarantee has been deposited with council, the guarantee shall not be cancelled until such time as the original contribution and accrued interest are paid.

## **2.12 Can the contribution be settled “in-kind” or through a material public benefit?**

The council may accept an offer by the applicant to provide an “in-kind” contribution (ie the applicant completes part or all of work/s identified in the plan) or through provision of another material public benefit in lieu of the applicant satisfying its obligations under this plan.

Council may accept such alternatives in the following circumstances:

- (a) the value of the works to be undertaken is at least equal to the value of the contribution that would otherwise be required under this plan; and
- (b) the standard of the works is to council’s full satisfaction; and
- (c) the provision of the material public benefit will not prejudice the timing or the manner of the provision of public facilities included in the works program; and

The value of the works to be substituted must be provided by the applicant at the time of the request and must be independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications.

Council will require the applicant to enter into a written agreement for the provision of the works.

Acceptance of any such alternative is at the sole discretion of the council. Council may review the valuation of works or land to be dedicated, and may seek the services of an independent person to verify their value. In these cases, all costs and expenses borne by the council in determining the value of the works or land will be paid for by the applicant.



## 2.13 Exemptions

Council may consider exempting developments, or components of developments from the requirement for a contribution. These would include developments that do not cause a demand on the public facility for which the contribution has been set. For such claims to be considered, a development application will need to include a comprehensive submission arguing the case for exemption.

## 2.14 Review of contribution rates

To ensure that the value of contributions are not eroded over time by movements in CPI, land value increases, the capital costs of administration of the plan or through changes in the costs of studies used to support the Plan, the council will periodically review the contribution rates.

The contribution rates will be reviewed by reference to the following:

- construction costs by the General Construction Index (GCI) as published by the Australian Bureau of Statistics.
- specific valuations for particular parcels of land that are identified in the s94 plan

In accordance with clause 32(3)(b) of *the EP&A Regulation*, the following sets out the means by which the council will make changes to the rates set out in this plan.

For changes to the **General Construction Index**, the contribution rates within the plan will be reviewed on a quarterly basis in accordance with the following formula:

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

Where

<b>\\$C<sub>c</sub></b>	Is the current contribution rate (ie that applies at the time of review);
<b>\\$C<sub>A</sub></b>	is the contribution at the time of adoption of the plan;
Current_Index	is the General Construction Index for Sydney as published by the Bureau of Statistics at the time of review of the contribution rate;
Base Index	is the General Construction Index for Sydney as published by the Bureau of Statistics at the date of adoption of this Plan which was 137.5.

Note: In the event that the Current GCI is less than the previous GCI, the Current GCI shall be taken as not less than the previous GCI.

## **2.15 How are contributions adjusted at the time of payment?**

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 taking into account any rises in the Building Materials Index. These will be determined by applying the formula contained in Clause 2.14 above at the date of payment.

The current contributions are calculated by council and are available from council offices.

## **2.16 Are there allowances for existing development?**

Contributions will be levied according to the estimated increase in demand. An amount equivalent to the contribution applicable to any existing (or approved) development on the site of a proposed new development will be allowed for in the calculation of contributions.

This means that contributions will be levied on new residential developments in accordance with the following arrangements:

- For Subdivisions – for each lot created less one credit for each existing lot which contains a dwelling house or for which a contribution has previously been paid;
- For DAs involving new dwellings – for each extra tenement or extra equivalent tenements constructed on a land parcel.

Where a development does not fall within any of the items noted above, the council will determine the credit on the basis of the likely demand that the existing development would create on the facilities being provided under the Plan.

## **2.17 Pooling of contributions**

This plan expressly authorises monetary s94 contributions paid for different purposes to be pooled and applied (progressively or otherwise) for those purposes. The priorities for the expenditure of the levies are shown in the works schedule.

### **3. WHAT IS NEXUS AND WHY IS IT IMPORTANT?**

The provisions of Section 94 (S94) of the Environmental Planning and Assessment Act enables Council to obtain development contributions as a means for funding local public amenities and infrastructure that are required as a result of new development.

Section 94B(1) of the Act requires that a contribution can be imposed only if a development contribution plan is prepared and adopted. Further, the contribution can only be imposed if it is in accordance with that contribution plan.

The power of Council to levy Section 94 contributions relies upon Council's ability to establish clear nexus between the proposed development and the need for increased amenities and infrastructure.

The three aspects of nexus which must be considered are causal, physical and temporal.

- Causal nexus requires that the need for the service or facility being levied must be a result of the development being levied.
- Physical nexus requires that the service or facility be near enough in physical terms to provide benefit to that development.
- Temporal nexus requires that the service or facility must be provided within a reasonable time.

In this Plan, these aspects will be demonstrated through:

- a. determination of the additional impervious areas caused by new development (the causal relationship); and
- b. determining from the above, the increased demand for infrastructure including where and when it will be needed (the physical and temporal relationship)

#### **4. WHAT DEVELOPMENT IS EXPECTED AT SOUTH BUNGENDORE?**

Between the 1996 census and the 2001 census the population of Bungendore and adjacent areas increased from 1353 to 1681 people. This is an average increase of over 4.0% per annum.

Since 2001 this growth rate has been sustained with over 200 extra building approvals. The current population of Bungendore village is estimated to be about 2000 people.

The last of the stages of the Elmslea Estate continue to be developed and will be completed during 2007/08. Based on the current growth trends it is expected that within 2 years most of the Elmslea lots will be taken up.

From all indicators a similar growth rate can be expected over the next decade given that arrangements are now in place for an adequate water source to be available for the village. The construction of new Defence Force Headquarters just south of the village will ensure continued interest in the village. An increase of 2500 population from 2000 in 2007 to 4500 can be projected in a 20 year timeframe to 2027.

With encouragement from the NSW Department of Planning it is expected that a significant proportion of the village's new residential development will occur within the drainage catchment area covered by this plan. Already there are a number of subdivision and medium density applications for infill development on the larger lots available in the area.

An assessment has indicated that the village could end up having a total of about 1500 lots of average size of 1000 sq metres to accommodate this population growth within the existing village boundaries. Of this total an extra 200 possible lots/equivalent lots could be developed in the area covered by this drainage contribution plan.

Some DAs for light industrial development can be expected in the small area that is zoned for light industrial.

## **5. WHAT IS THE DEMAND FOR KINGS HIGHWAY CULVERTS AT SOUTH BUNGENDORE?**

Upgraded culverts are needed under the Kings Highway to cater for storm water flow associated with accommodating subdivisions and subsequent building activities that could occur in the south Bungendore area. The existing culverts have been adequate for the low level of development existing at the commencement of the plan.

While Water Sensitive Urban Design (WSUD) and onsite detention (OSD) measures are required for developments to lessen impacts on the drainage network, it is expected that these arrangements will have little affect in ameliorating the stormflows of the high intensity storms above the 1 in 20 year event.

The upgraded culverts will be designed and constructed to:

- a. convey stormflows under the highway for a 1 in 100year storm event involving increased runoff resulting from an increase in impervious areas caused by developments.
- b. relieve the ponding of runoff water in the lower areas where new lots could be created
- c. prevent floodwaters from Halfway Creek backflowing up the highway culverts by the installation of floodgates on the culvert outlets.
- d. include a gross pollution trap adjacent to the culverts to catch any rubbish washed into the drainage flow paths upstream

The upgraded culverts will be required before significant increases in development occur. Therefore under the plan, the construction of the culvert works is programmed for 2008/09 funded from loan with these funds plus an allowance for interest being reimbursed over time by contributions received under the plan. It is expected that the indexing of the contributions will largely offset the interest expense.

## 6. HOW ARE CONTRIBUTIONS CALCULATED?

The formula recognises that the need for the new facilities will be to cater for the building activities and the associated increase in impervious areas that will result from the developments in the catchment.

The main development type will be residential as a result of subdivision approvals that create extra lots on which new dwellings will be constructed. It will be a practical outcome for both the applicant and Council therefore if contributions can be calculated on a per lot basis with conversion to equivalent lots for developments other than subdivisions. The conversion factor for the other development types can be assessed based on a comparison of the respective impervious areas between a typical building footprint on a house lot and the footprint proposed by the other development types. In the calculations it will be assumed that the impervious footprint for a house lot is an average of 400 square metres taking into account roof and paved areas.

From a review of the vacant land in the catchment an assessment has determined that a total of about 200 extra lots of average size of 1000 square metres could be created over a 15-20 year period.

$$\text{S94 Contribution \$/lot or equivalent lot} = \frac{C}{L}$$

Where

C = Cost of providing upgraded highway culvert works  
(refer to schedule in Part 8)

L = Predicted number of extra lots/equivalent lots in the catchment

## **7. WHAT APPORTIONMENT FACTORS APPLY**

None in this case.

The existing culverts under the Kings Highway are adequate for the existing low level of development. The upgraded facilities are needed to cater for an expected increase in development in the catchment area of the plan. Therefore the plan is based on new developments meeting the full cost of the works involved. Thus Council will not be contributing to the works from its own revenue sources.

**8. WORKS SCHEDULE**



## 9. CALCULATION OF CONTRIBUTIONS

### For Subdivisions

$$C/P = \$420,000/200 = \$2,100 \text{ per lot}$$

For Other Development Types eg industrial, business, medium density or dual occupancy

$$= \$2,100 \times \text{DIF}/400$$

Where

DIF is the Development's Impervious Footprint in square metres

400 is the area in square metres of the impervious area of a typical residential lot with house.

## **10. REFERENCES**

NSW Department of Planning Practice Note – Template for a section 94 development contributions plan (Issued July 2005)

Bungendore Discussion Paper 2006 (Prepared by Palerang Council July 2006)

# ATTACHMENT 1



**CATCHMENT AREA FOR S94 PLAN No.10  
AT SOUTH BUNGENDORE**

