

Nambucca Shire Council

Section 94A Development Contribution Plan

May 2016 35462/2017

## Notes and Corrections to this Issue

Please note the following and corrections:

**There are no corrections**

## Amendments and Revisions

<b>Issue No</b>	<b>Date</b>	<b>Issue Title</b>	<b>Amendment</b>
1	24 April 2013	Adopted by Council	
2	6 May 2013	Effective Date	
3	26 May 2016	Review – Public Consultation	Addition of Valla Urban Growth Area
4	14 Sept 2017	Adopted by Council	

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## Introduction

Section 94A of the Environmental Planning and Assessment Act 1979 gives Council the power to impose as a condition of development consent a requirement that the applicant pay a levy of a fixed percentage of the cost of the proposed development. Section 94B of the Act requires that a condition imposed under Section 94A must be in accordance with a contributions plan. Subject to the plan, money received as payment under a condition must be applied towards the provision, extension or augmentation of public amenities or public services.

## Requirements of the Plan

### 1 Name of this Contribution Plan

This plan is the Nambucca Shire Council Section 94A Development Contributions Plan 2013.

### 2 Area and development to which the Plan applies

This plan applies to development other than residential on all land that is identified in the map in Schedule 1.

This plan applies to applications for development consent and applications for complying development certificates under Part 4 of the EP&A Act 1979 except development for residential purposes.

### 3 Date of commencement of the Plan

This plan was adopted by Council on 24 April 2013 and commences on 6 May 2013. It applies to development applications determined after the plan commences.

If a development application has been made but has not been determined before this plan commences, the application is to be determined in accordance with the contribution plan or plans in force at the time the application was made.

The life of this plan is five years, at which time it will be reviewed.

### 4 Relationship to other Plans

This plan repeals the following Section 94 contributions plans:

- Car Parking for Macksville CBD Development/Redevelopment 2003
- Car Parking for Bowra Street Western Redevelopment Nambucca Heads 1999

### 5 Summary schedules

Levies paid to Council will be applied toward meeting the cost of provision or augmentation of new or existing public facilities in the areas as listed in Schedule 1. The locations of those facilities are within the catchments as shown on the maps included in Schedule 1.

The Section 94A contributions levied under this plan are set out in the following table for types of development and the percentage of levies on the costs of development.

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

The determination of the cost of development is explained in Section 9 of this plan.

A Council cannot impose a condition of the same development consent a condition under Section 94 as well as a condition under Section 94A of the EP&A Act, except where the development is for two components such as a subdivision and commercial/industrial development.

A condition imposed under Section 94A is not invalid by reason only that there is no connection between the development in the subject of the development consent and the object of expenditure of any money to be paid by the condition.

A condition imposed under Section 94A that is allowed by or determined in accordance with this contributions plan may not be disallowed or amended by the Court on appeal.

Conditions on development consents or complying development certificates authorised by this plan are subject to any direction by the Minister under Section 94E of the Act. This plan authorises the imposition of conditions in accordance with any such direction.

## **6 Purposes of the Plan**

The main purposes of this plan are to:

- Authorise the imposition of a condition on certain development consents and complying development certificates requiring the payment of a contribution pursuant to Section 94A of the EP&A Act 1979;
- Require a certifying authority (the Council or an accredited certifier) to impose, as a condition of issuing a complying development certificate, a requirement that the applicant pay to the Council a levy determined in accordance with this plan, if development consent was granted subject to a condition authorised by this plan; and
- Govern the application of money paid to the Council under condition authorised by this plan.

## **7 Demand for public amenities and public services**

This plan is based on the provision of new, extended and augmented public amenities, services and infrastructure to support the growth and development of the Nambucca Shire Council. New residents will have inadequate levels of service if Council does not take action to provide amenities and infrastructure to cope with the new growth or extend and augment existing facilities. The levels of service for the existing population will also decline if there is inadequate public investment.

The population projections undertaken by Council and using ABS Census 2011 data, indicate that continued population growth in Nambucca Shire is expected. The projected population for 2023 is expected to be around 22,000 people, an increase of 180 people per year between 2013 and 2023, or an increase of .9% per year.

As part of this population growth there will be an associated growth in non-residential development, particularly in the form of commercial and industrial development. This increase in development will create a demand for new and augmented public amenities and facilities which include:

- New and upgraded road networks
- Traffic management facilities
- Car parking
- Town Centre improvement works

To cater for this increased demand for public facilities, Council proposes to carry out the construction of facilities in areas identified in Schedule 1, which are in addition to works identified in Council's other s94 Contributions Plans.

## Administration and Operation of the Plan

### 8 Calculation of the levy

The levy will be determined on the basis of the rate as set out in Section 5. The levy will be calculated as follows:

$$\text{Levy Payable} = \%C \times \$C$$

Where

**%C** is the levy rate applicable

**\$C** is the proposed cost of carrying out the development

### 9 Determining the cost of development

The cost of carrying out a proposed development will be determined in accordance with clause 25J of the EP&A Regulation 2000. A copy of this clause is provided in Attachment B.

To provide reliable information on the cost of carrying out a development, the applicant for a development consent or complying development certificate is to provide details with the application in accordance with the plan. There are two levels of information provision, depending on the scale of the cost of development:

#### **Development cost between \$101,000 and \$500,000**

Where the cost of carrying out a proposed development is in this range, a Cost Summary Report (at Attachment 1) must be completed by the applicant or a nominated representative such as the project architect or project manager.

#### **Development cost more than \$500,000**

Where the cost of carrying out a proposed development is in this range, a Detailed Cost Report (at Attachment 2) must be completed by a Quantity Surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate an equivalent qualification.

Without limitation to the above, the valuation of the cost of development may be reviewed and the services of an independent qualified person may be sought to verify the development cost assessment. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant.

### 10 Timing of payment and adjustment of contributions

In accordance with Council's Policy on Section 94 (Developer Contributions), contributions payments must be made prior to the release of the occupation certificate (for development applications involving building work). Council also requires payment of any costs associated with verifying the cost assessment prior to the issue of the occupation certificate.

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

As the date of payment of a contribution under a consent condition may be later than the consent date, Clause 25J (4) of the Regulation allows Council to adjust the contribution to reflect cost increases during this period. Contributions will be adjusted at the time of payment of the contribution using the following formula:

**Contribution at the time of payment**

$$C_2 = \frac{C_1 \times CPI_2}{CPI_1}$$

Where:

- C<sub>1</sub> = Monetary contribution imposed on the development consent
- C<sub>2</sub> = Monetary contribution at the time the contribution is paid
- CPI<sub>1</sub> = Latest Consumer Price Index: All Groups Index Number for Sydney available from the Australian Bureau of Statistics (ABS) at the time of granting the relevant development consent.
- CPI<sub>2</sub> = Latest Consumer Price Index: All Groups Index Number for Sydney available from the ABS at the time of payment.

**11 Complying development certificates**

Pursuant to Section 94EC(1) (a) and Section 85A (9) of the EP&A Act 1979, where an accredited certifier issues a complying development certificate for a development to which this plan applies, the certificate must be subject to a condition requiring the applicant to pay to Council the levy in accordance with this plan.

The condition imposed by an accredited certifier on a complying development certificate must include details of the requirements of Section 10 of this plan concerning when payment of the levy is to be made to Council, the requirement for evidence confirming payment and the formula for adjusting the amount of the payment to account for the possible difference in time between consent date and payment date.

The imposition of a condition on a complying development certificate issued by a certifying authority as authorised by this plan is subject to compliance with any Ministerial directions given under Section 94E of the EP&A Act 1979.

**12 Alternative to paying a levy**

Council may accept the dedication of land or provision of a material public benefit or works in kind in part or full satisfaction of a Section 94A levy under this plan.

As a general rule, only land or works directly associated with the roads and traffic improvements, public domain improvements and community facilities as indicated in Schedule 1 may be considered as a material public benefit or work in kind in satisfaction of the contributions levy. Applicants must provide full details, costs and valuations of land or works.

If Council agrees to an alternative to the levy, it will either require the alternative as a condition of consent, or accept it under the terms of a Voluntary Planning Agreement.

**13 Deferred or periodic payments**

Council will accept a deferred or periodic payment of contributions subject to the contribution being secured by Bank Guarantee and the deferment being no longer than 24 months. In such a case, the applicant must make a written request.

Council will require the applicant to provide a bank guarantee by a bank for the full amount of the contribution or the outstanding balance on the condition that:

- 1 indexing will be calculated from the date the contribution was due until the date of payment;
- 2 the bank guarantee be by a bank for the amount of the total contribution, or the amount of any outstanding contribution plus an amount equal to 25 months' interest plus any charges associated with establishing or operating the bank security;
- 3 the bank unconditionally pays the guaranteed sum to the Council if the Council so demands in writing not earlier than 24 months from the provision of the guarantee or completion of the work;
- 4 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;
- 5 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;
- 6 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 has been paid;
- 7 the applicant will be charged an administrative fee based on the professional fees set in Council's Revenue Policy; and
- 8 periodic payments for a staged development will be on a pro rata basis – the proportion of the stage of the development in relation to the overall development.

#### **14 Exemptions to the levy**

Under the provisions of section 94E of the Act, the Minister for Planning and Infrastructure has specified exemptions from a levy under the Plan to apply to the following development:

- Where the proposed cost of carrying out the development is \$100,000 or less
- For the purpose of disabled access
- For the sole purpose of providing affordable housing
- For the purpose of reducing the consumption of mains supplied potable water, or reducing the energy consumption of a building
- For the sole purpose of the adaptive re-use of an item of environmental heritage or
- 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.

Other exemptions from a levy under this plan may be considered by Council for the following development or components of development:

- Places of worship, public hospitals, police stations, fire stations and other emergency services.
- Works proposed to be undertaken for charitable purposes by, or on behalf of, a not for profit charity as defined by the ATO but only in cases where the development is of small scale and where the Council considers that there will not be an increase in the demand for public works or infrastructure as a result of the development which would warrant the payment of a Section 94A levy.
- Applications submitted by or on behalf of Nambucca Shire Council.

#### **15 Administration of the Section 94A funds**

Nambucca Shire Council is to administer the money obtained from the Section 94A levy and make decisions on the application of funds applied towards the provision, extension or augmentation of public amenities, infrastructure or public services for the Nambucca Shire Council area in accordance with the EP&A Act 1979 and Regulation 2000.

This plan expressly authorises Section 94A levies paid for different purposes to be pooled and applied (progressively or otherwise) for the purposes indicated in Schedule 1, including with funds from other Council sources.

This plan also expressly authorises that unspent monies collected through previous (and now repealed) Section 94 plans are to be expended as if they were funds received under a Section 94A plan on works identified in the previous plans where those works have been carried across to the Works Schedules included in this plan.

Furthermore, where works identified in previous Section 94 plans are no longer considered necessary, then this plan authorises that the unspent money be transferred to this plan and spent on the works identified in the Works Schedule of this plan, which are similar to the works categories included in the previous Section 94 plans.

## **16 Dictionary**

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

<b>Council</b>	means Nambucca Shire Council
<b>Levy</b>	means a levy under Section 94A of the Act authorised by this plan
<b>Minister</b>	means the Minister administering the Environmental Planning and Assessment Act 1979
<b>Public facility</b>	means a public amenity or public service
<b>The Act</b>	means the Environmental Planning and Assessment Act 1979
<b>Regulation</b>	means the Environmental Planning and Assessment Regulation 2000

## Schedule 1 – Works Schedule and Maps

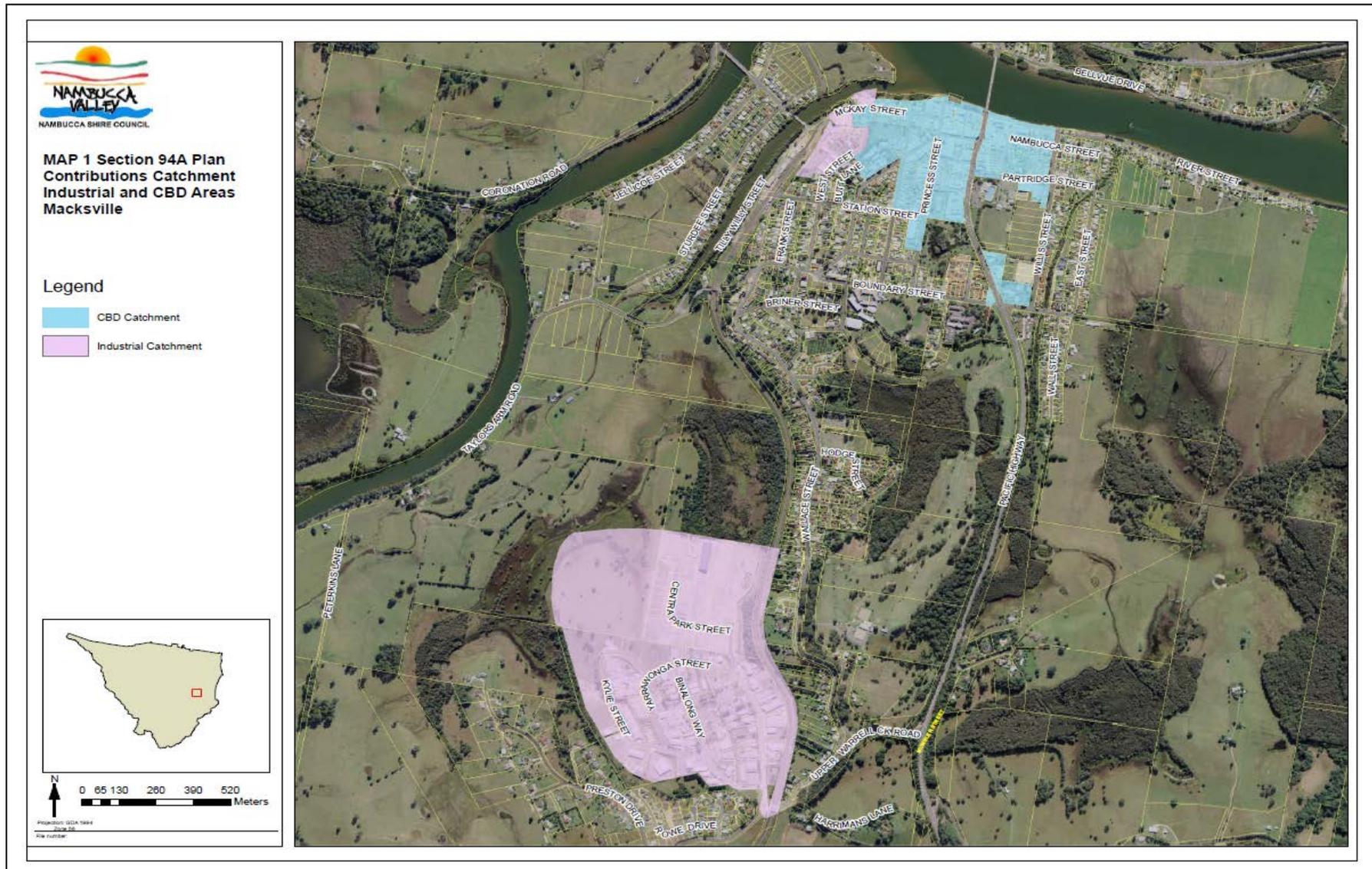
The table below provides a summary of the works or services for which funds collected under this plan will be used, including an estimate of the annual expenditure under this plan. Funds collected under this plan may provide only a part of the cost of works, infrastructure and services. The table also indicates the priority of their provision, extension or augmentation which may be subject to availability of supplementary funding.

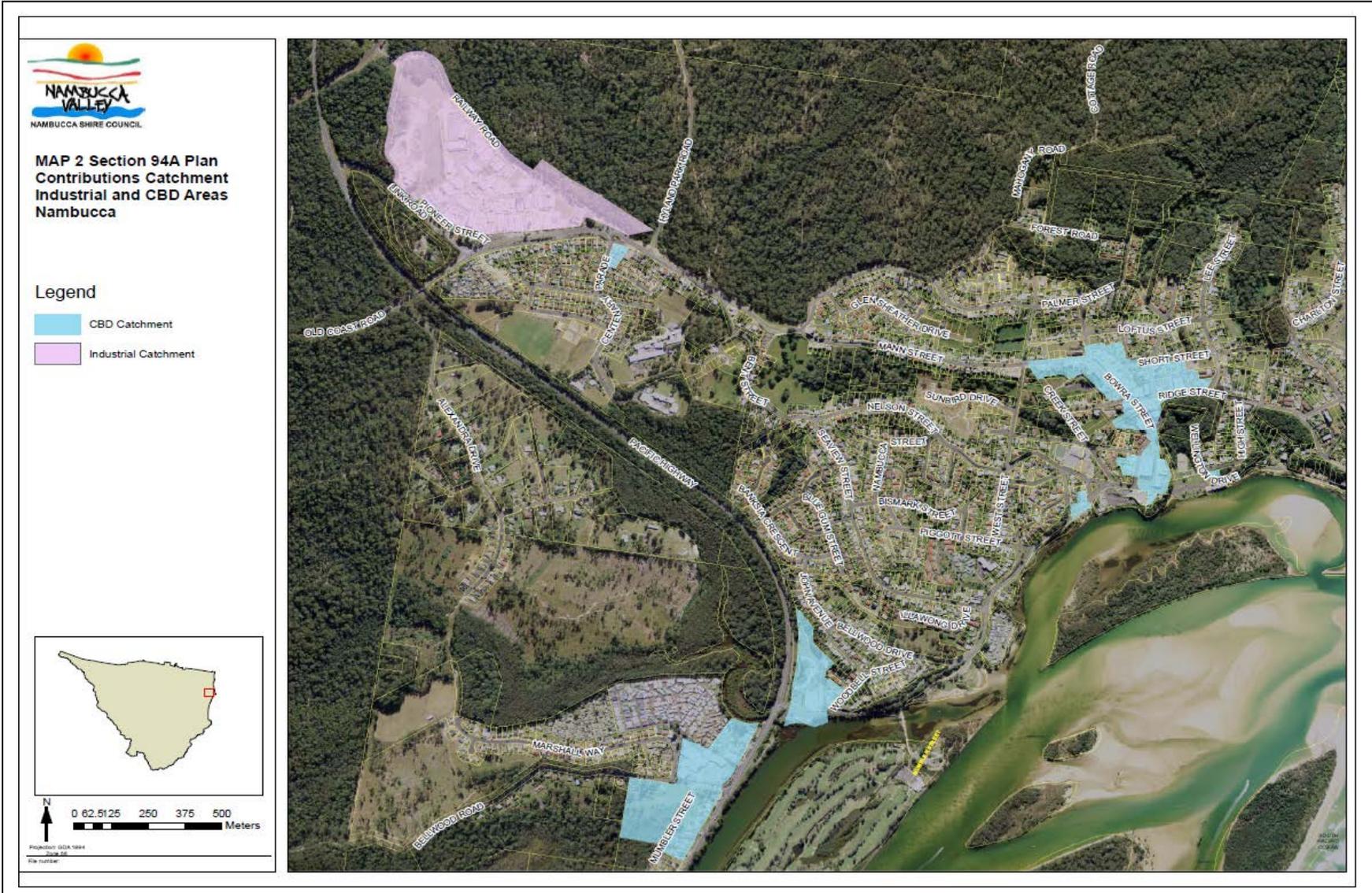
The actual timing of delivery of works is subject to change as it is influenced by the following factors:

- The rate and timing of development from which contributions are collected;
- The pooling of sufficient funds to enable provision, extension or augmentation of amenities and services;
- The requirements of Council’s annual works program from year to year; and
- The relationship between works and other events.

<b>Location</b>	<b>Works Program</b>	<b>Estimated Annual Expenditure*</b>
Macksville	Streetscape, Parking, Road and Intersection Upgrades	\$10,000
Nambucca Heads	Streetscape, Parking, Road and Intersection Upgrades	\$10,000
Bowraville	Streetscape, Parking, Road and Intersection Upgrades	\$5,000
Valla Urban Growth Area	Streetscape, Parking, Road and Intersection Upgrades	\$5,000

\* comprised of estimated contributions collected under this plan over the life of the plan, and pooled funds collected under plans which have been repealed with the implementation of this plan.



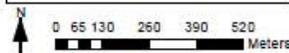
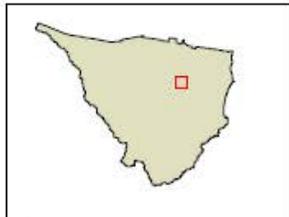




**MAP 1 Section 94A Plan  
Contributions Catchment  
Industrial and CBD Areas  
Bowraville**

**Legend**

-  CBD Catchment
-  Industrial Catchment



Projection: GDA 1984  
Scale: 1:10,000  
File number:





## Attachment A

### Procedure

A cost summary report is required to be submitted to allow Council to determine the contribution that will be required. The following should be provided:

- 1 A cost summary report must be completed for works with a value no greater than \$500,000.
- 2 A Quantity Surveyor's Detailed Cost Report must be completed by a registered Quantity Surveyor for works with a value greater than \$500,000.

To avoid doubt, section 25J of the Environmental Planning and Assessment Act 1979 sets out the things that are included in the estimation of the construction costs 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 includes 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.

**Cost Summary Report**  
(Development cost of less than \$500,000)

Development Application No.	
Complying Development Certificate Application No.	
Date	

Applicant's Name	
Applicant's Address	
Development Name	
Development Address	

**Estimate Details**

Demolition and alternations	\$
Structure	\$
External walls, windows and doors	\$
Internal walls, screens and doors	\$
Wall finishes	
Floor finishes	\$
Ceiling finishes	\$
Fittings and equipment	\$
Hydraulic services	\$
Mechanical services	\$
Fire services	\$
Lift services	\$
External works	\$
External services	\$
Other related work	\$
<b>Sub-total</b>	\$
Preliminaries and margin	\$
<b>Sub-total</b>	\$
Consultant fees	\$
Other related development costs	\$
<b>Sub-total</b>	\$
Goods and Services Tax	\$
<b>TOTAL DEVELOPMENT COST</b>	\$

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 at current prices.
- Included GST in the calculation of development cost.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position and qualifications: \_\_\_\_\_

Date: \_\_\_\_\_

**Registered\* Quantity Survey's Detailed Cost Report**  
**(Development costs in excess of \$500,000)**

**\*Member of the Australian Institute of Quantity Surveyors**

Development Application No.	
Complying Development Certificate Application No.	
Date	

Applicant's Name	
Applicant's Address	
Development Name	
Development Address	

**Development Details**

Gross Floor Area - Commercial	m <sup>2</sup>	Gross Floor Area - Other	m <sup>2</sup>
Gross Floor Area - Retail	m <sup>2</sup>	Total Gross Floor Area	m <sup>2</sup>
Gross Floor Area - Car Parking	m <sup>2</sup>	Total Site Area	m <sup>2</sup>
<b>Total Development Cost</b>			
<b>Total Construction Cost</b>			
<b>Total GST</b>			

**Estimate Details**

<b>Professional Fees</b>	\$	<b>Excavation</b>	\$
% of development cost	%		\$/ m <sup>2</sup>
% of construction cost	%	<b>Car Park</b>	\$
<b>Demolition and site preparation</b>	\$	Cost per m <sup>2</sup> of site area	\$/ m <sup>2</sup>
Cost per m <sup>2</sup> of site area	\$/ m <sup>2</sup>	Cost per space	\$
<b>Construction - Commercial</b>	\$	<b>Fit-out - Commercial</b>	
Cost per m <sup>2</sup> of commercial area	\$/ m <sup>2</sup>	Cost per m <sup>2</sup> of commercial area	\$/ m <sup>2</sup>
<b>Construction - Retail</b>	\$	<b>Fit out - Retail</b>	\$
Cost per m <sup>2</sup> of retail area	\$/ m <sup>2</sup>	Cost per m <sup>2</sup> of retail area	\$/ m <sup>2</sup>

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 Development Contributions of Nambucca Council at current prices.
- Included GST in the calculation of the development costs.
- 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 B – Determination of proposed cost of development**

*Clause 25J of the Environmental Planning and Assessment Regulation 2000 (for 1 August 2011)*

### **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 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 and under any law;
  - (j) the costs of enabling access by disabled persons in respect of the development;
  - (k) the costs of energy and water efficiency measures associated with the development;
  - (l) the cost of any development that is provided as affordable housing;
  - (m) the costs of any development that is the adaptive reuse of a heritage item.
- (4) The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date at which the levy is required to be paid.
- (5) To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.