



**SECTION 94A DEVELOPMENT CONTRIBUTIONS PLAN FOR THE
COUNCIL OF LOCKHART SHIRE**

2015

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Introduction

Lockhart Shire nestles in the heart of the Riverina and is one of the region's most productive agricultural and pastoral areas. The Shire's main towns and villages include Lockhart, The Rock, Yerong Creek, Pleasant Hills and Milbrulong. Each community has its own unique character and history, and provides for a range of different services and facilities.

Background

There is increasing pressure from Commonwealth and State Governments for Councils to fund public infrastructure with local and own source revenue, based on the premise of 'user-pays' charges.

In light of this information, and to maintain the current community expectation of a high standard of infrastructure, Council has prepared a new Development Contribution Plan in accordance with the provisions of the Section 94 of the Environmental Planning Assessment Act 1979.

The Plan aims to provide:

- Resources to Council for the purpose of providing facilities to meet the needs of the Shire into the future;
- Proof of future demand for public facilities;
- Details on works associated with public facilities that are intended to be undertaken in the future;
- A clear explanation as to how the contributions are calculated;
- A clear definition of the areas and types of development to which the plans apply;
- Detail on the current developer contribution rates applicable in the Shire;
- Clarity on when contributions are payable and how they will be expended; and
- Direction on the review process for the Plan.

The current Plan, known as the Shire of Lockhart Developer Contributions Plan, was produced in 2002, and over the last 5 years has been responsible for collection of levies to the sum of \$130,000.

This new s94A Plan, to replace the 2002 version, is valid for 5 years from the date of adoption by Council (Refer Section 1.3 of PART C). Council may be required to amend the Plan in light of changes to requirements for public infrastructure, or funding opportunities, in which case it will be reviewed by Council and again displayed for public consultation prior to adoption.

What does Section 94A of the Act provide?

94A Fixed development consent levies

(1) A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a Contributions Plan, of the proposed cost of carrying out the development.

(2) A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under Section 94.

(2A) A consent authority cannot impose a condition under this section in relation to

development on land within a special contributions area without the approval of:

(a) the Minister, or

(b) a development corporation designated by the Minister to give approvals under this subsection.

(3) Money required to be paid by a condition imposed under this section is to be applied towards the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation). The application of the money is subject to any relevant provisions of the Contributions Plan.

(4) A condition imposed under this section is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.

(5) The regulations may make provision for or with respect to levies under this section, including:

(a) the means by which the proposed cost of carrying out development is to be estimated or determined, and

(b) the maximum percentage of a levy

Forms of developer contribution

The Act makes provision for contributions to be made in the following forms:

- Monetary (cash);
- Dedication of land; or
- Works that are deemed by Council to provide material public benefit (works in kind).

For the purposes of this plan only monetary contributions have been identified as the most practical method of implementation. Any variation of this method of contribution would be considered by Council based on the circumstances of the case and its merits to achieve the outcomes identified in the plan.

PART A – Summary schedules

The following summary schedules are included in this plan:

- Works Program
- Summary of levy by category.

The Works Program, shown in Schedule 1, identifies the public facilities for which Section 94A levies will be required over the next 5 years, and a summary of the estimated cost of provision and timing. Appendices C - E identify the location of the proposed facilities, in relation to the expected growth of each Village.

Schedule 1: New public facilities Works Program for which levies will be sought

Public Facilities	Estimated Costs	Estimated Time Frame	Location of Funded Work Map and ID
The Rock			Appendix C
Carson St Playground	50,000	2020	1
Rec Ground Playground	100,000	2017	2
Footpaths, The Rock East	30,000	2020	3
Public Swimming Pool	500,000	2020	4
Lockhart			Appendix D
Walter Day Park Toilets	100,000	2016	5
Public Swimming Pool	500,000	2018	6
Other Locations			Appendix E
Footpaths Yerong Creek (Y/C)	15,000	2017	7

It is Council's intention that the Contributions Plan levies sufficient funding to contribute 10% towards the cost of each of the public facilities in Schedule 1.

Schedule 2: Summary schedule for Section 94A Contributions Plan

Type of Development	Levy (%)
All Development Applications and applications for Complying Development Certificates whose total costs amount to less than \$100,001	Nil
All Development Applications and applications for Complying Development Certificates with a total cost from \$100,001 - \$200,000 (excluding exempt development, Section 96 applications to modify Development Application Consent and Development Applications proposed by Council)	0.5
All Development Applications and applications for Complying Development Certificates with a total cost exceeding \$200,000 (excluding exempt development, Section 96 applications to modify Development Application Consent and Development Applications proposed by Council)	1.0

NOTE: CONTRIBUTION AMOUNTS RESTRICTED BY THE EPA ACT 1979:

Environmental Planning and Assessment Regulation 2000, Section 25K (Section 94A levy—maximum percentage)

(1) The maximum percentage of the proposed cost of carrying out development that may be imposed by a levy under Section 94A of the Act is:

(a) in the case of development other than development specified in paragraph (b):

(i) if the proposed cost of carrying out the development is up to and including \$100,000—nil, or

(ii) if the proposed cost of carrying out the development is more than \$100,000 and up to and including \$200,000—0.5 per cent of that cost, or

(iii) if the proposed cost of carrying out the development is more than \$200,000—1 per cent of that cost.

PART B – Expected development and demand for public facilities

The relationship between expected development and the demand is established through:

- The population projections undertaken by Lockhart Shire Council and .id (SAFI) indicate the likely growth of 9.8% for The Rock urban area;
- The realisation of the planned development envisaged in Lockhart LEP 2012 Amendment No 1:
 - Changes to the minimum lots sizes in the RU1 Primary Production zone;
 - The release of more land for Large Lot development (R5 zone) at The Rock and Lockhart;
 - The creation of industrial estates at Lockhart and the Rock by rezoning rural land as IN 1 General Industrial.
- The likely population growth will require the provision of additional public facilities;
- The likely population growth will diminish the existing population's enjoyment and standards of public facilities;
- The ever-changing legislative requirements and community expectations of higher standards associated with human health and environmental sustainability.
- The original aims of the Plan as specified in the document background.

PART C – Administration and operation of the plan

1.1 What is the name of this development Contributions Plan?

This development Contributions Plan is called the Lockhart Shire Development Contributions Plan 2015.

1.2 Application of this plan

This plan applies to all land within the local government area of Lockhart Shire.

This development Contributions Plan applies to applications for development consent and applications for complying development certificates under Part 4 of the *Environmental Planning and Assessment Act 1979*. The rates for different types of development are set out in Schedule 2.

1.3 When does this development Contributions Plan commence?

This Contributions Plan commences on 16 June 2015.

1.4 What is the purpose of this Contributions Plan?

The primary purposes of this Contributions Plan are:

- to authorise the imposition of a condition on certain development consents and complying development certificates requiring the payment of a contributions pursuant to Section 94A of the *Environmental Planning and Assessment Act 1979*
- to assist the Council to provide the appropriate public facilities which are required to maintain and enhance amenity and service delivery within the area
- to publicly identify the purposes for which the levies are required

Schedule 1: New public facilities for which levies will be sought

Public Facilities	Estimated Costs	Estimated Time Frame
The Rock		
Carson St Playground	50,000	2020
Rec Ground Playground	100,000	2017
Footpaths, The Rock East	30,000	2020
Public Swimming Pool	500,000	2020
Lockhart		
Walter Day Park Toilets	100,000	2016
Public Swimming Pool	500,000	2018
Other Locations		
Footpaths Yerong Creek (Y/C)	15,000	2017

1.5 Are there any exemptions to the levy?

The levy will not be imposed in respect of development:

- where the proposed cost of carrying out the development is \$100,000 or less; or
- for the purpose of disabled access; or
- for the sole purpose of providing affordable housing; or
- for the purpose of reducing a building's use of potable water (where supplied from water mains) or energy; or
- for the sole purpose of the adaptive re-use of an item of environmental heritage; or
- that has been the subject of a condition under Section 94 under a previous development consent relating to the subdivision of the land on which the development is to be carried out.

Other possible exemptions

Council may consider exempting other development, or components of developments from the Section 94A levy that include:

- *An application which is solely for the purpose of alterations and additions to an existing single dwelling;*
- *Activities that will foster Economic Development for the Shire, at the discretion of Council (in order to be consistent, any such application will be assessed by reviewing it against a schedule of criteria including social, economic and environmental factors).*

1.6 Pooling of levies

This plan expressly authorises Section 94A levies 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 (Section 1.4 above).

1.7 Construction certificates and the obligation of accredited certifiers

In accordance with clause 146 of the EP&A Regulation 2000, a certifying authority must not issue a construction certificate for building work or subdivision work under 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 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 to by the Council. In such cases, Council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

1.8 How will the levy be calculated?

The levy will be determined on the basis of the rate as set out in summary *Schedule 2 Summary schedule of levy for section 94 Contributions Plan PART A*.

The levy will be calculated as follows:

Levy payable = %C x \$C

Where

%C is the levy rate applicable

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

NOTE

The proposed cost of carrying out the development will be determined in accordance with clause 25J of the EP&A Regulation. The procedures set out in Appendix A to this plan must be followed to enable the Council to determine the amount of the levy to be paid. Appendix B contains a sample Cost Summary Report.

Without limitation to the above, 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 and no construction certificate will be issued until such time that the levy has been paid.

1.9 When is the levy payable?

A levy must be paid to the Council at the time specified in the condition that imposes the levy. The condition will be read as follows:

*“Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, and the Lockhart Shire Council Section 94A Development Contributions Plan, a contributions of **[\$insert total amount]** shall be paid to Council.*

*The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Lockhart Shire Development Contributions Plan 2015 Section 94A Development Contributions Plan. The contributions is to be paid before the release of the **[appropriate Part 4A Certificate i.e. Construction Certificate, Subdivision Certificate, Complying Development Certificate, Occupation Certificate]**.*

1.10 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 of the contributions in accordance with the following formula:

Contributions at time of payment = \$Co + A

Where:

\$Co is the original contributions as set out in the consent.

A is the adjustment amount which is =

$$\frac{\$Co \times ([Current Index - Base Index])}{[Base Index]}$$

Where:

Current Index is the Consumer Price Index for 'Sydney – All Groups' as published by the Australian Bureau of Statistics available at the time of review of the contributions rate;

Base Index is the Consumer Price Index for 'Sydney – All Groups' as published by the Australian Bureau of Statistics at the date of adoption of this plan which is specified in Section 1.3 of this Plan.

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

1.11 Can deferred or periodic payments be made?

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

- deferred or periodic payment of the contributions will not prejudice the timing or the manner of the provision of public facilities included in the works program;
- in other circumstances considered reasonable by Council.

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 contributions or the outstanding balance on condition that:

- the bank guarantee be by a bank for the amount of the total contributions, or the amount of the outstanding contributions, 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 contributions and accrued interest are paid.

References

Environmental Planning and Assessment Act 1979 and Regulations 2000

NSW Department of Planning Contribution Plan Practice Note (2006)

Lockhart Local Environmental Plan 2012 and Amendment No1

Shire of Lockhart Developer Contributions Plan 2002

Lockhart Shire Community Strategic Plan 2012 - 2022

Lockhart Shire Delivery Program 2014 - 2018

Lockhart Shire Operational Plan 2014 - 2015

Lockhart Shire Council Rural Settlement and Industrial Land Rezoning Study 2013

Lockhart Shire Council Tourism and Economic Development Strategy 2013 - 2023

.id Consulting (2015) Small Area Forecast Information. Collingwood, Victoria, Australia

Dictionary

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

“Community infrastructure” means infrastructure of a communal, human or social nature, which caters for the various life-cycle needs of the public including but not limited to childcare facilities, community halls, youth centres, aged persons facilities.

“Contributions Plan” means a public document prepared by Council pursuant to s94EA of the Environmental Planning and Assessment Act.

“Development” means: the erection of a building on that land; the carrying out of a work in, on, over or under that land; the use of that land or of a building or work on that land; or the subdivision of that land.

“Developer contributions” means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

“Material Public Benefit” does not include the payment of a monetary contributions or the dedication of land free of cost.

“Planning authority” means:

- (a) a Council, or
- (b) the Minister, or
- (c) the corporation, or
- (d) a development corporation (within the meaning of the Growth Centers (Development Corporations) Act 1974), or
- (e) a public authority declared by the EP&A Regulations to be a planning authority for the purposes of this Division.

“Planning benefit” means a development contributions that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.

“Public” includes a section of the public.

“Public benefit” is the benefit enjoyed by the public as a consequence of a development contribution.

“Public facilities” means public infrastructure, facilities, amenities and services.

“Public purpose” is defined in s93F(2) of the Environmental Planning and Assessment Act to include the provision of, or the recoupment of the cost of providing public amenities and public services (as defined in s93C), affordable housing, transport or other infrastructure. It also includes the funding of recurrent expenditure relating to such things, the monitoring of the planning impacts of development and the conservation or enhancement of the natural environment.

“Works-in-Kind” means the construction or provision of the whole or part of a public facility that it identified in a works schedule in a Contributions Plan.

APPENDIX A: Procedure

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

- A cost summary report must be completed for works with a value equal to or greater than \$100,001.
- A Quantity Surveyor's Detailed Cost Report must be completed by a registered Quantity Surveyor for works with a value equal to or greater than \$400,001.

Note: Appendix B contains a sample Cost Summary Report.

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 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.

APPENDIX B: Sample Cost Summary Report

Cost Summary Report

[Development Cost no greater than \$ [INSERT FIGURE HERE]

DEVELOPMENT APPLICATION No. REFERENCE:

COMPLYING DEVELOPMENT CERTIFICATE APPLICATION No.

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.

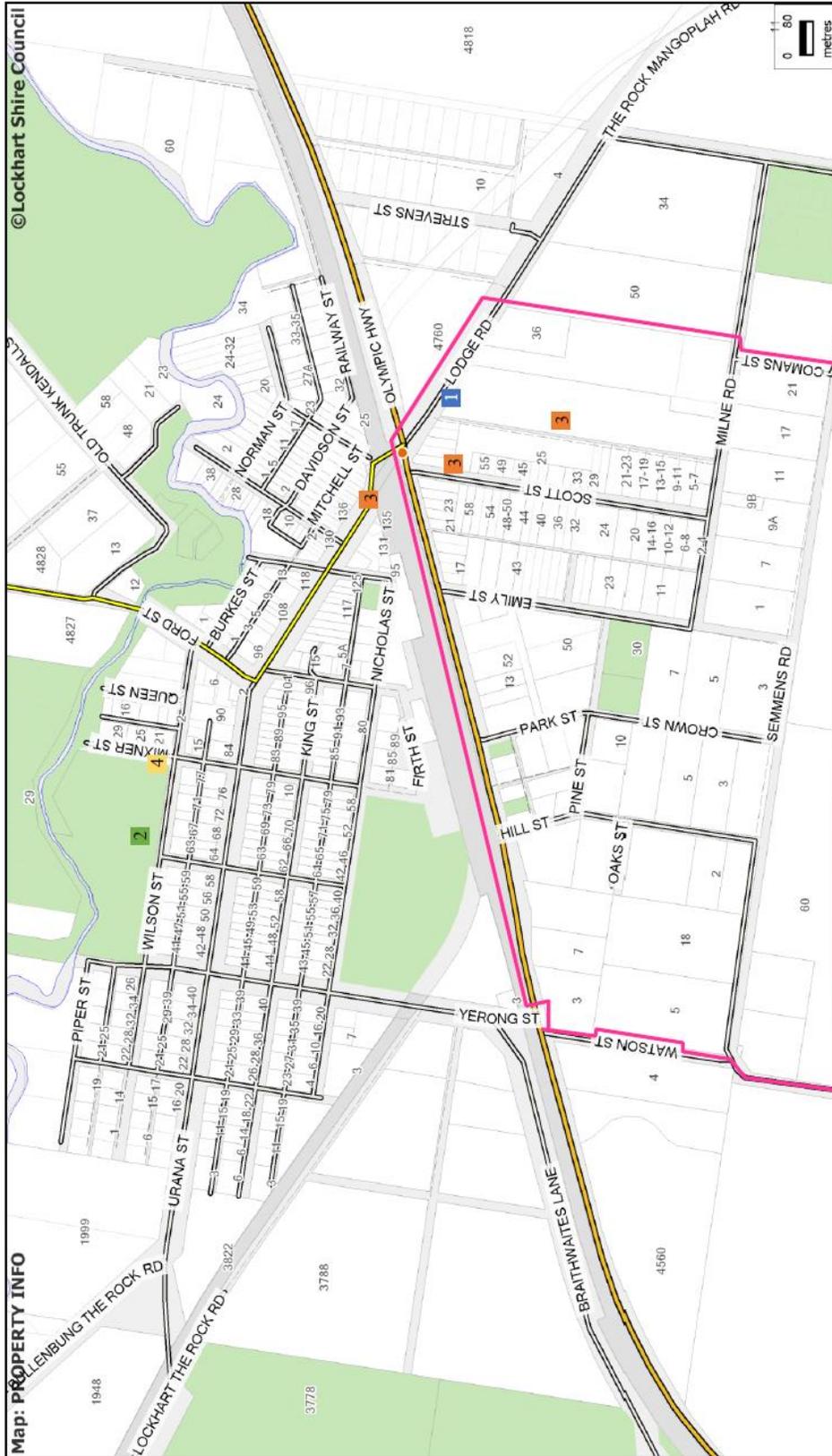
Signed: _____

Name: _____

Position and Qualifications: _____

Date: _____

APPENDIX C: Location of Section 94A Funded Work, The Rock



THE ROCK

- Proposed future growth area
- Caron Street playground (1)
- Rec Ground Playground (2)
- Footpaths (3)
- Public Swimming Pool (4)

True North, Grid North and Magnetic North are shown. Grid North is based on the GDA 1984 datum. Magnetic North is based on the 2015 magnetic field model. Grid North is 10.2° True North. Grid North and Magnetic North are shown. Grid North is based on the GDA 1984 datum. Magnetic North is based on the 2015 magnetic field model. Grid North is 10.2° True North.



Important Notice!
This map is not a precise survey document. Accurate locations can only be determined by a survey on the ground. The information on this map is for general information only. It is not intended to be used for any purpose other than to provide a general overview of the location of the proposed work. The information on this map is not intended to be used for any purpose other than to provide a general overview of the location of the proposed work. The information on this map is not intended to be used for any purpose other than to provide a general overview of the location of the proposed work.



