



SECTION 94 DEVELOPMENT CONTRIBUTIONS

PLAN NO 11

FOR THE PROVISION OF PUBLIC OFF-STREET CARPARKING AT BUNGENDORE



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

**5 May 2011
11 May 2011**

Refer to Page 2 for a list of subsequent amendments to this plan.

Amendment 1 (Came into effect 18/12/2013) – Revised sub-clause 2.13: Criteria for businesses, in relation to carpark spaces required, reduced to 50% of the RTA Guideline requirements for the first 200m² of Gross Floor Area (GFA). – The exemption made under this sub-clause will be re-assessed prior to 30 June 2017.

INDEX

1. SUMMARY.....	4
2. ADMINISTRATION AND OPERATION OF THE PLAN.....	5
2.1 WHAT IS THE NAME OF THIS PLAN?	5
2.2 WHERE DOES THIS PLAN APPLY?	5
2.3 WHAT IS THE PURPOSE OF THIS DEVELOPMENT CONTRIBUTIONS PLAN?	5
2.4 WHAT ARE THE SPECIFIC OBJECTIVES OF THIS PLAN?	5
2.5 COMMENCEMENT OF THE PLAN.....	6
2.6 RELATIONSHIP WITH OTHER PLANS AND POLICIES.....	6
2.7 DEFINITIONS	6
2.8 WHEN IS THE CONTRIBUTION PAYABLE?	7
2.9 CONSTRUCTION CERTIFICATES AND THE OBLIGATION OF ACCREDITED CERTIFIERS	7
2.10 COMPLYING DEVELOPMENT AND THE OBLIGATION OF ACCREDITED CERTIFIERS	8
2.11 DEFERRED/PERIODIC PAYMENTS	8
2.12 CAN THE CONTRIBUTION BE SETTLED “IN-KIND” OR THROUGH A MATERIAL PUBLIC BENEFIT?	9
2.13 EXEMPTIONS	10
2.14 REVIEW OF CONTRIBUTION RATES.....	10
2.15 HOW ARE CONTRIBUTIONS ADJUSTED AT THE TIME OF PAYMENT?	11
2.16 ARE THERE ALLOWANCES FOR EXISTING DEVELOPMENT?	11
2.17 POOLING OF CONTRIBUTIONS	11
3. WHAT IS NEXUS AND WHY IS IT IMPORTANT?	12
4. WHAT GROWTH IN BUSINESS ACTIVITY IS EXPECTED IN THE BUNGENDORE CBD?	13
5. WHAT IS THE DEMAND FOR PUBLIC CARPARKING WITHIN THE BUNGENDORE CBD?	14
6. HOW ARE CONTRIBUTIONS CALCULATED?	15
7. WHAT APPORTIONMENT FACTORS APPLY?.....	16
8. WORKS SCHEDULE	17
9. CALCULATION OF CONTRIBUTIONS	18
10. REFERENCES	19
ATTACHMENT 1.....	20
ATTACHMENT 2.....	21

SECTION 94 PLAN NO 11 FOR THE PROVISION OF OFF - STREET PUBLIC CARPARKING AT BUNGENDORE

1. SUMMARY

This Contributions Plan has determined that the costs to purchase land and construct the planned off-street public carpark at Bungendore will be \$11,000 per carpark space. The facility will be provided in stages as the town develops over the next 20 years.

The adopted contribution below will be subject to cost adjustment each quarter based on the Consumer Price Index for Canberra.

SCHEDULE OF CONTRIBUTIONS

For developments causing the need for extra carparking in the Bungendore commercial/business zone	\$11,000 per carpark space
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The assessment of parking required for each development shall be based on the NSW Roads and Traffic Authority's document Guide to Traffic Generating Developments 2002 and any updates of this document.

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 11 for the Provision of Off-street Public Carparking at Bungendore**

2.2 Where does this Plan apply?

This plan applies to all land in the Commercial Precinct as identified in the Development Control Plan Yarrowlumla LEP 2002 2(V) Village Zone adopted in May 2009. The area is shown on Attachment 2 and indicates where commercial and retail businesses will be concentrated. It is expected that this commercial area will be maintained into the future with designation as a B2 zone in the updated Palerang LEP which is under development.

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 are the specific objectives of this Plan?

The specific objectives of this Plan are to ensure that:

- Adequate car parking spaces are available within convenient walking distance of business developments as the business centre of Bungendore develops as the town and its surrounds grow.

- New developments pay a fair and reasonable contribution towards carparking that will be needed to serve the businesses that will occupy the central business district of Bungendore.

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 Yarrowlumla 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&A Act</i>	Means the Environmental Planning and Assessment Act, 1979, as amended.
<i>EP&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 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?

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.

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

2.13.1 General

Council may consider exempting developments, or components of developments from the requirement for a contribution. These may include nursing homes and residential 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.

2.13.2 Specific Exemption resulting from Amendment 1 of this Plan, approved by Council on 5 December 2013 and came into effect from 18 December 2013.

The following revised methodology will be applied, up to 30 June 2017, to the assessment of carparking requirements for development applications in the area proposed for B2 (business zoning) in Bungendore:

- a. reduce the criteria for businesses in relation to carpark spaces required to 50% of the RTA Guideline requirements for the first 200m² of Gross Floor Area (GFA). For change of use of premises, calculate the number of carpark spaces required for the existing development and deduct this number from the number of carpark spaces calculated for the new development with inclusion of the above exemption;
- b. restrict application of this exemption to new development applications and recent development approvals where the development has not proceeded to operation/occupation stage.

The exemption made under this sub-clause will be re-assessed prior to 30 June 2017.

2.14 Review of contribution rates

To ensure that the value of contributions are not eroded over time by movements in CPI, land values, 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 rate.

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

- construction costs by the Consumer Price Index (CPI) for Canberra prepared by the Australian Bureau of Statistics.
- specific valuations for 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 **CPI**, the contribution rates within the plan will be reviewed on a quarterly basis in accordance with the following formula:

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

Where

\\$C_c	Is the current contribution rate (ie that applies at the time of review);
\\$C_A	is the contribution at the time of adoption of the plan;
Current_Index	is the CPI for Canberra as published by the Bureau of Statistics at the time of review of the contribution rate;
Base Index	is the CPI for Canberra as published by the Bureau of Statistics at the date of adoption of this Plan, which was 176.8 at Mar 2011 .

Notes: 1. In the event that the current CPI is less than the previous CPI, the current CPI shall be taken as not less than the previous CPI.

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 rate 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 rate that is applicable at time of payment taking into account any rises in the Consumer Price Index. These will be determined by applying the formula contained in Clause 2.14 above at the date of payment.

The current contribution is calculated by Council and is available from Council offices.

2.16 Are there allowances for existing development?

Contributions will be levied according to the estimated increase in demand.

This means that contributions will be levied on new developments based on the number of extra carpark spaces required. The number of extra carpark spaces required will be determined with reference to the RTA Guide to Traffic Generating Developments where the number of carpark spaces required for the existing development (if any) will be calculated and deducted from the number of carpark spaces calculated for the new development.

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.

3. WHAT IS NEXUS AND WHY IS IT IMPORTANT?

The provisions of Section 94 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 to which the levy is applied.
- 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 need for additional carpark spaces caused by new development (the causal relationship);
- b. the extra carparking required for new developments in the Bungendore CBD being located in the public carpark located in the Bungendore CBD (the physical nexus);
- c. the extra carparking required being provided progressively as the contributions are received by Council (the temporal relationship)

4. WHAT GROWTH IN BUSINESS ACTIVITY IS EXPECTED IN THE BUNGENDORE CBD?

A substantial growth in new and enlarged businesses is expected in Bungendore to service the town as it and its surrounds grow significantly over the next 10-20 years. From ABS figures, Bungendore is recognised as one of the fastest growing towns in Australia.

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 about 4.4% per annum. Between the 2001 census and the 2006 census the population further increased to 2182 which is a 5.4% annual growth rate.

Applying a similar percentage increase indicates that the current population of the greater Bungendore town area would be about 2600 people.

The last of the stages of the Elmslea Estate is being developed and there are a number of other infill subdivision applications approved and under construction, while others are being processed by Council. From many indicators therefore, a similar growth rate can be expected over the next decade provided that an adequate water source is available for the village. The construction of new Defence Force Headquarters just south of the village will ensure continued interest in the town. An increase to 4500-5000 can be projected well within a 20 year timeframe.

The demand on business services especially cafes and tourist shops will also be increased by the many visitors to Bungendore including day trippers from the ACT and tourists stopping off on their way to Canberra or the coast.

5. WHAT IS THE DEMAND FOR PUBLIC CARPARKING WITHIN THE BUNGENDORE CBD?

Up until to now carparking requirements in Bungendore's CBD have largely been satisfied through the parking available on the streets adjacent to businesses. This has been supplemented by some off-street carparking on private property associated with some of the developments.

These arrangements however are not going to be adequate into the future as the town continues to grow. Already on-street parking spaces are becoming increasingly difficult to find during peak times. Small isolated private carparking is generally satisfactory for staff parking but is not so suitable for customer parking when the availability of spaces behind shops is not obvious from the street. Constructing carparks on each property is considered to be inefficient and requires numerous driveway entrances that reduce on street carpark spaces.

To address the need for carparking in the future Council has taken steps to establish a centrally located off-street public carpark that can be developed in stages in keeping with the demand for extra carparking as it occurs. The site for the public carpark is illustrated in the plan at Attachment 1. At this location, behind existing premises in Ellendon/Malbon/Gibraltar Streets, convenient access will be provided to businesses.

Based on the remaining stocks of undeveloped properties it is predicted that at least 200 new off-street carpark spaces will be required within a 20 year timeframe.

The need to provide a central carpark has been recognised in the Bungendore Discussion Paper 2006.

6. HOW ARE CONTRIBUTIONS CALCULATED?

The formula below recognises that the new carparking facilities are required for future business developments.

$$\text{S94 Contribution per off-street carpark space} = \frac{C}{N}$$

Where

C = Cost of providing the public off-street carpark
(refer to Part 8)

N = Total number of off-street carpark spaces that are expected to be required and provided

7. WHAT APPORTIONMENT FACTORS APPLY?

No apportionment factor will be applied under this plan. At the time of preparation, parking requirements for existing businesses have been satisfied without this planned off-street public carpark. The new facility will be constructed to cater for future developments. It is not intended therefore that Council will sink any of its funds into the facility but it will need to borrow funds to purchase the necessary land and to construct the facilities. These loans will be repaid by the S94 contributions that are received over time.

8. WORKS SCHEDULE

9. CALCULATION OF CONTRIBUTIONS

S94 Contribution = $C/N = \$2,200,000/200 = \$11,000$ per carpark space

Where

C = Total cost of off-street carpark

N = Total number of carpark spaces to be provided

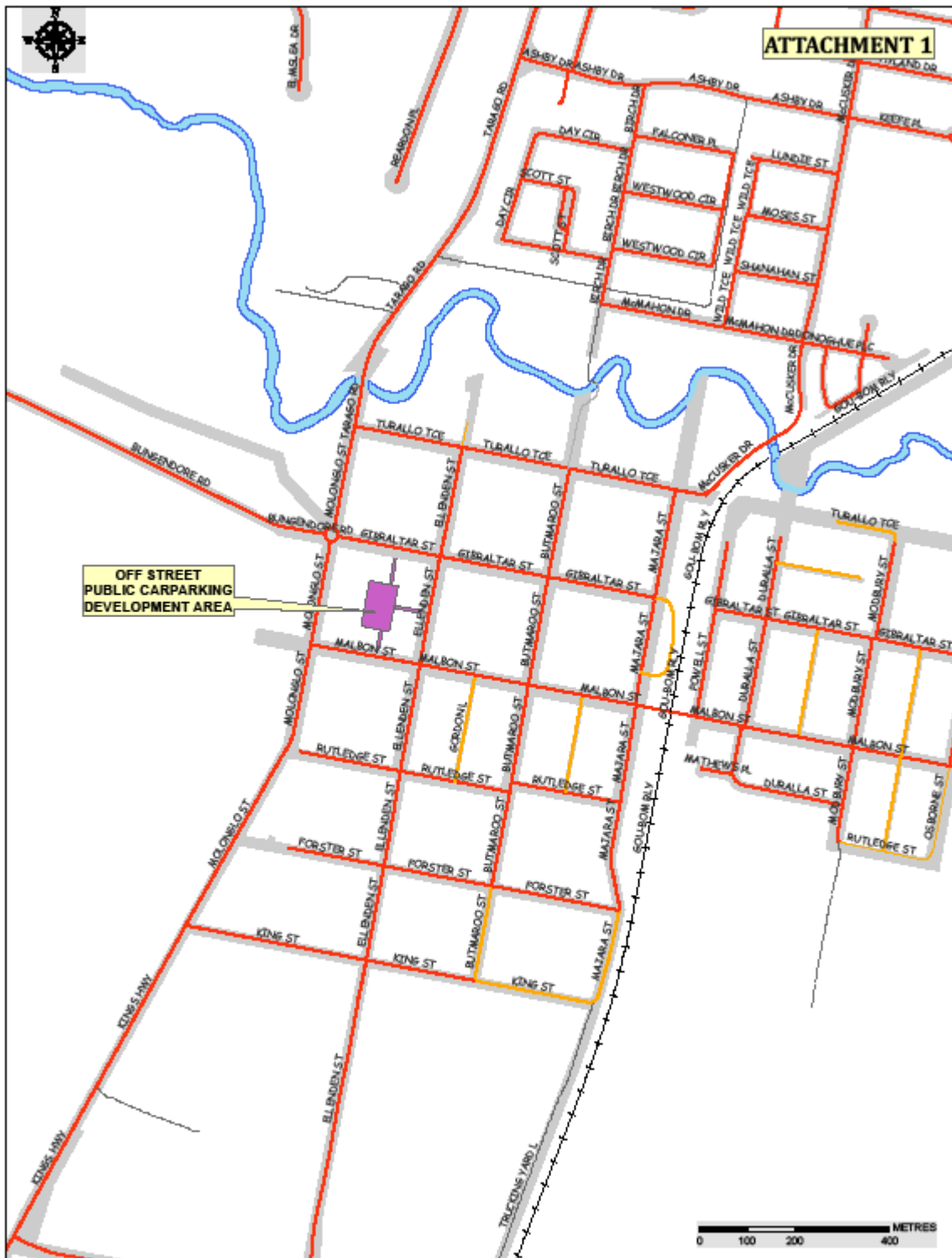
10. REFERENCES

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

Bungendore Discussion Paper 2006 (Palerang Council July 2006)

NSW RTA Guide to Traffic Generating Developments 2002.

ATTACHMENT 1



**SITE FOR BUNGENDORE
PUBLIC CARPARK**

