



SECTION 94 DEVELOPMENT CONTRIBUTIONS

PLAN NO 9

FOR STREET UPGRADING AT BUNGENDORE



ADOPTED BY COUNCIL:

12 July 2007

THIS PLAN CAME INTO EFFECT ON:

18 July 2007

Amendment No 1 Kings Highway/Trucking Yard Lane Intersection Upgrading Added (October 2009). Came into effect 14/10/09

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SECTION 94 PLAN NO 9 – STREET UPGRADING AT BUNGENDORE

1. SUMMARY

This Contributions Plan has determined contributions as indicated below towards necessary street upgrading projects at Bungendore valued at \$2,406,000. The works will include the bitumen sealing of some streets, widening and strengthening of deficient pavements, some supplementary kerb, gutter, shoulder & swale treatments, and necessary installation of traffic facilities at some intersections. These projects will be undertaken progressively as the town develops over the next 20 years. Council acknowledges that it will need to make proportional contributions over this period to cater for pre-existing users.

It is important to note that contributions sought under this Contributions Plan are to assist in improving the road network leading to and utilised by new developments. In addition to these contributions, developers will be required to construct at their own expense any roadworks required within development sites and fronting or adjacent to development sites that have not already been identified as works being undertaken by Council under this Plan.

The adopted contributions which will be subject to cost adjustment each quarter have been determined as follows, based on \$2,455 per new lot:

SCHEDULE OF CONTRIBUTIONS

For Subdivisions	\$2,455 per lot
For Medium Density/Dual Occupancy	
a. 1 Bedroom Unit	\$1,016 per unit
b. 2 Bedroom Unit	\$1,608 per unit
c. 3 Bedroom Unit	\$2,201 per unit
d. Above 3 Bedrooms Unit	\$2,455 per unit
For Businesses	Extra ADT(vpd)/8vpd x the per lot contribution

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 Plan No 9 for Street Upgrading at Bungendore**

2.2 Where does this Plan apply?

This plan applies to all land within the Bungendore village boundaries as shown on Attachment 1.

The Plan applies to the following development:

- subdivision of land that creates lots with new building entitlements
- the erection of more than one dwelling on a single lot
- business, commercial and industrial developments that cause an increase in traffic

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 is to ensure that new developments pay a fair and reasonable contribution towards street upgrading and traffic facilities works that will be required to cater for increased vehicle movements as the village grows to full development.

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.

It repeals the provisions included in P7.6.5.2 of YSC Section 94 Plan No 2.

2.7 Definitions

<i>Applicant</i>	Means the person, company or organisation submitting a development application.
<i>ADT</i>	Means average daily traffic and is measured as the total number of vehicle movements in both directions passing a particular point.
<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 undertakings 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 (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 may include nursing homes and non-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.

2.14 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) for NSW 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:

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

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 General Construction Index for NSW as published by the Bureau of Statistics at the time of review of the contribution rate;

Base Index is the General Construction Index for NSW as published by the Bureau of Statistics at the date of adoption of this Plan which was 136.1.

Notes: 1. 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. The General Construction Index for New South Wales can be found at www.abs.gov.au under Series ID A2333667W.

3. The Building Materials Index for Sydney which has been suggested by NSW Department of Planning's Practice Note as an appropriate index to use is no longer prepared by ABS and is replaced by the General Construction Index for NSW.

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 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. To assess this the following occupancy rates for the existing tenement(s) will be used:
 - Dwelling houses (ie 1 Equivalent Tenement) – **2.9** persons per dwelling
 - Other tenements
 - 1 bedroom unit/dual occupancy – 1.2 persons per dwelling;
 - 2 bedroom unit/dual occupancy – 1.9 persons per dwelling;
 - 3 bedroom unit/dual occupancy – 2.6 persons per dwelling
- Other Developments – The assessed extra increase in traffic (ADT) will be converted to Equivalent Tenements by dividing by 8 vehicles per day. To assess the extra traffic generated reference shall be made to the NSW Road & Traffic Authority's Guide to Traffic Generating Developments.

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 works 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 population generated by new development (the causal relationship); and
- b. determining from the above, the increased demand for amenities and infrastructure and where and when they will be needed (the physical and temporal relationship)

4. WHAT RESIDENTIAL DEVELOPMENT AND POPULATION INCREASE IS EXPECTED AT AND SURROUNDING 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 as well there are a number of other infill subdivision applications with Council. These are sited in the older areas of the village,

From all indicators 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 village. An increase of 2500 population from 2000 in 2007 to 4500 can be projected in a 20 year timeframe to 2027.

An assessment has indicated that a total of about 1500 lots of average size of 1000 sq metres could be created to accommodate this population growth within the existing village boundaries. The future creation of new lots will occur south of Turallo Creek.

For each new lot or equivalent lot (or equivalent tenement) created, traffic is predicted to increase by at least 8 vehicle movements per day.

5. WHAT IS THE DEMAND FOR STREET UPGRADING AT BUNGENDORE?

Village residents expect to be provided with adequate and well drained streets to safely access the various facilities available in the village and to be able to join up with the Kings Highway, Bungendore Road, Tarago Road or Hoskinstown Road to travel to work or visit other areas

Apart from the new streets in the Elmslea Estate many of the streets are in a poor condition and are inadequate to provide durable, functional and safe thoroughfares into the future as traffic grows with village development. Each new lot and DA approved adds extra traffic to the street network and increases the need and urgency for upgrading works.

Some streets need to be sealed while others need to be strengthened and widened. In the process, attention also needs to be given to street drainage including the provision of kerb and gutter in some areas and treatment of shoulders and swales in other areas. Physical measures to properly control and direct traffic are also needed at some locations.

The projects listed in the schedule included in Attachment 1 are considered to be needed for the proper and safe functioning of the general street network and are included in the Plan's Works Program at Section 8. These works will be provided to the benefit of both existing and future developments. Other roadworks that will be more specially needed by individual developments at and adjacent to individual development sites will not be provided under this Plan but will need to be provided by the developers concerned at their own cost.

6. HOW ARE CONTRIBUTIONS CALCULATED?

The formula below recognises that the street upgrading works are all located south of Turallo Creek for growth of this section of the village to full development. This will result in a total of some 980 lots in this area

$$\text{S94 Contribution/lot} = \frac{C}{N}$$

Where

C = Cost of providing the street upgrading works
(refer to schedule in Part 8)

N = Projected number of lots south of Turallo Creek.

Based on 1996 ABS data for Bungendore, the occupancy rates applied for residential developments are as follows:

- 2.9 person per residential lot or detached dwelling, and
- 1.9 person on average for medium density units

7. WHAT APPORTIONMENT FACTORS APPLY

The planned schedule of street upgrading works indicated in 8 below will cater for the improvement of existing deficient street formations used by existing traffic as well as providing upgraded streets to cater for the extra traffic from new development. The upgrading works are located in the older area of the village south of Turallo Creek where the existing 600 lots is expected to increase to about 980 lots (or equivalent lots) within the next 15-20 years.

The total costs for the upgrading works will therefore be met in part by future developments and in part by existing developments in the following ratio:

Future Development : Existing Development = 380:600 or 39% to 61%

8. WORKS PROGRAM

WORKS PROGRAM - ROADWORKS ON BUNGENDORE STREETS

Street	Location	Description of Works	Length (m)	Unit Rate Per M	Cost \$	Priority	Timeframe (within)
Molonglo	Turallo - Gibraltar	K&G, widen and strengthen pavement	220	250	55,000	2	10 yrs
Molonglo	Rutledge - King	K&G, drainage, shoulder seal eastern side	400	250	100,000	1	5 yrs
Ellendon	Turallo - Gibraltar	K&G, shoulder seal both sides	220	250	55,000	3	15 yrs
Ellendon	Malbon - King	K&G, widen and strengthen pavement	520	350	182,000	1	5 yrs
Ellendon	King - Trucking Yard Lane	Widen, strengthen, swale treatment (K&G by developments)	750	260	195,000	2	10 yrs
Butmaroo	Gibraltar - Malbon	K&G, shoulder seal	200	250	50,000	2	10 yrs
Butmaroo	Malbon - Forster	K&G, widen and strengthen pavement	400	260	104,000	3	15 yrs
Butmaroo	Forster - King	Seal (K&G by developments)	200	200	40,000	2	10 yrs
Majara	Turallo - Gibraltar	K&G, shoulder seal and parking areas, traffic calming	220	300	66,000	1	5 yrs
Majara	Gibraltar - Malbon	Traffic calming	200	100	20,000	2	10 yrs
Majara	Forster - King	Seal (K&G by developments)	200	200	40,000	3	15 yrs
Turallo	Adjacent to Key Intersections	Threshold/Traffic calming treatments	Item	allow	100,000	2	10 yrs
Turallo	Powell - Modbury	Construct and seal in part	200	300	60,000	3	15 yrs
King	Kings Hwy - Ellendon	K&G north side (K&G south side by developments)	360	250	90,000	2	10 yrs
King	Butmaroo - Majara	Seal (K&G by developments)	250	200	50,000	3	15 yrs
Hoskinstown Rd	Trucking Yard - Rail	Widen and strengthen pavement	600	200	120,000	3	15 yrs

Trucking Yard	Ellendon - End	Straighten and seal (K&G by developments)	250	250	65,000	1	5 yrs
Malbon	Butmaroo - Majara	K&G and shoulder seal	200	300	60,000	2	10 yrs
Malbon	Majara - Modbury	K&G and shoulder seal	440	350	154,000	2	10 yrs
Various	Various	Widen and strengthen pavement and treat swales	1250	200	250,000	2-3	10-15 yrs
Various	Various	Intersection treatments and traffic facilities	Item	allow	400,000	1-2-3	5-15 yrs
Kings Hwy	At Trucking Yard Lane Intersection	Upgrade intersection to modified AUR/BAL	Item	allow	150,000	1	5yrs
		TOTAL			2,406,000		

Council's financial commitment under the plan is therefore
 $\$2,406,000 \times 0.61 = \$1,467,660$

9. CALCULATION OF CONTRIBUTIONS

For Subdivisions →= $C/N = \$2,406,000/980 = \$2,455/\text{lot}$

For Medium Density/Dual Occupancy

- a. 1 Bedroom Unit = $\$2,455 \times 1.2/2.9 = \$1,016$ per unit
- b. 2 Bedroom Unit = $\$2,455 \times 1.9/2.9 = \$1,608$ per unit
- c. 3 Bedroom Unit = $\$2,455 \times 2.6/2.9 = \$2,201$ per unit
- d. Above 3 Bedrooms Unit = $\$2,455$ per unit

For Businesses →= Extra ADT in vpd/8vpd x current contribution rate for a lot

10. REFERENCES

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

11. ATTACHMENT 1

