



SECTION 94 PLAN

ST MARYS TOWN CENTRE

Adopted by Council on 5th July 1993

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PENRITH
CITY COUNCIL

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1.0 INTRODUCTION

1.1 WHAT IS SECTION 94?

Section 94 of the Environmental Planning and Assessment Act 1979 enables councils to levy contributions from developers for the provision of public amenities and services which are required as a consequence of development.

The Court has determined that Section 94 is the sole mechanism that a council can use to levy contributions from a developer.

The application of Section 94 follows three general principles:

1. the contribution must be for, or relate to a planning purpose;
2. the contribution must fairly and reasonably relate to the subject development; and
3. the contribution must be such as a reasonable planning authority, duly appreciating its statutory duties, could have properly imposed.

Under Section 94(1) a council is able to impose a condition on any development consent requiring a contribution:

- to provide works or facilities to be carried out in the future; or
- to fund works or facilities from the development or its occupants will benefit.

1.2 TYPES OF CONTRIBUTIONS

Section 94 makes provision for three methods of payment of contribution:

- dedication of land to Council free of cost.
- monetary contribution; or
- works in kind (Material Public Benefit – physical components not being land, which are of benefit to the general community).

1.3 THE PURPOSE OF THIS PLAN

This plan sets down Council's policy for raising, holding and expending Section 94 contributions levied for the provision of parking within the St Marys Town Centre.

The contributions embodied in this plan are levied on the basis of a "contribution catchment" – the land area over which a contribution for a particular item is levied. Within each catchment, a schedule has been prepared of facilities and works which will ultimately be provided.

A formula has been developed for the provision of parking in order to calculate the contribution rate within the catchment. The formula takes into account the following:

- cost of works;
- land area required;
- cost of land acquisition;
- size of the catchment; and
- growth projection and the anticipated level of services and infrastructure required to meet the demands of growth.

1.4 FINANCIAL INFORMATION

A separate accounting record is maintained by Council for this Plan. It contains details concerning contributions received and expended, including interest earned, for each service or facility provided.

1.5 PLAN REVIEW

Council's Environmental Planning Department maintains a contributions register in accordance with Clause 41M of the Environmental Planning and Assessment Regulation.

A separate accounting record is maintained by Council's Financial Services Department for this Plan. It contains details of contributions received and expended, including interest earned, for each contribution category.

These records are available for inspection free of charge at each Department.

2.0 AIMS AND OBJECTIVES

The aims and objectives of this plan are as follows:

- to levy Section 94 contributions within the North Cranebrook release area for the purposes of roads and traffic management, community facilities, open space, drainage, trees and administration;
- to ensure that the contributions levied on development are reasonable;
- to ensure that the level of provision of facilities and services is adequate to satisfy the demand generated by additional development and population growth;
- to make clear Council's intentions regarding the type, location and timing of provision of parking facilities in the St Marys Town Centre.

3.0 LAND AFFECTED BY THE PLAN

The contributions embodied in this plan are levied on the basis of the St Marys Town Centre Contribution Catchment, illustrated in Figure 1, and generally within the following boundaries:

- the Main Western Rail Line and Station Street to the north;
- the Great Western Highway to the south;
- Gidley Street to the east; and
- Carinya Ave to the west.

4.0 RELATIONSHIP TO OTHER PLANS

A range of other planning controls apply to the St Marys Town Centre. Of principle importance is the Penrith Planning Scheme Ordinance.

In addition, Council is currently preparing a draft local environmental plan and draft development control plan for the St Marys Town Centre. These plans will provide a comprehensive strategy to guide all major aspects of the growth of St Marys Town Centre.

These plans will ultimately replace all existing planning controls for the St Marys Town Centre.

5.0 NEXUS

This plan adopts as its basis rationale the following principles in establishing nexus:

- The provision of a service and/or facility via a Section 94 contribution is a measurable consequence of the proposed development.
- The services or facility can be provided within a reasonable time frame.

5.1 PARKING NEXUS

Additional commercial or retail floorspace will attract an increased population to the centre, resulting in an increased demand for parking.

In many instances, parking cannot be physically provided on a site. As a consequence, Council may levy a contribution for the provision of parking in strategic locations within the centre.

The following sections of this plan provide detail on:

- the methodology used in calculating contribution rates for parking provision;
- formula;
- schedule of works; and
- timing/programming of provision of parking facilities.

Likely development scenarios for St Marys Town Centre over the next 10 years, between 1993 and 2003, have been assessed.

Current medium range floor space projections for St Marys Town Centre indicate an increase in gross floor area from 62,000m² (1993) to 77,000m² (2003) as a reasonable basis for this plan.

6.0 PARKING

6.1 CONTRIBUTION CATCHMENT

The parking contribution catchment is illustrated in Figure 1.

6.2 METHODOLOGY

In assessing contributions for parking, Council will have regard to:

- the type and scale of the proposed development;
- the estimated traffic generation of the proposal; and
- the impact of the proposal on the supply of existing and/or notional parking spaces within reasonable proximity of the proposed development.

The following references will be employed by Council in assessing parking requirements of a particular development proposal within the St Marys Town Centre:

- Penrith City Council Parking Code
- St Marys Town Centre Parking Study 1992
- AS.2890.1 – 1986
'Off-Street Parking Part 1 – Car parking facilities'
- Traffic Authority of NSW
'Policies, Guidelines and Procedures for Traffic Generating Developments'
- Any other relevant surveys, reports etc.

The parking able to be provided to accommodate increases in demand as a result of development will be provided by:

- sealing and formalising the areas shown in the St Marys Town Centre Parking Study 1992 documentation (see Figure 1(a));
- acquiring the land shown in the same document (see Figure 1(b)); and
- utilising some of the spare capacity in the existing car parking system.

The use of spare capacity was assumed for a mid week, mid day peak on a "normal" day. An upper threshold of 90% full was adopted as a "full" carpark state.

6.3 PARKING REQUIREMENTS, FORMULA, CONTRIBUTION RATES

6.3.1 PARKING REQUIREMENT

New development proposals shall be required to provide off-street car parking to satisfy the car parking needs of the proposal as determined in accordance with Council's Parking Code. In the instance where a proponent chooses to not provide the requisite number of car parking spaces on-site, and subject to the availability and location of existing and/or notional public car parking sites and the concurrence of Council, a contribution may be levied in lieu of the off-street car parking spaces not provided by the development.

6.3.2 FORMULA

The formula used to derive the contribution rate per car parking space in lieu of on-site car parking has been derived by determination of the following items, which are considered necessary in the provision of additional car parking spaces within the St Marys Town Centre to adequately cater for the needs of existing and future developments.

- existing supply of off-street parking spaces;
- proposed increase in the number of car parking spaces;
- funds remaining from monies previously levied;
- estimated cost of land acquisition;
- estimated cost of demolition of existing buildings;
- estimated cost of construction (kerb and gutter, drainage, sealing etc.)
- estimated cost of landscaping in new or upgraded carparks; and
- estimated cost of providing lighting in new or upgraded carparks.

The following formula shall be applied in the assessment of contributions payable for car parking in the St Marys Town Centre:

$$SR = (A \times Po) + (A \times Pc) \text{ or } (A \times Pr)$$

\$ Contribution = (SR – Op) x R where:

| | | |
|-----------|---|---|
| SR | = | Spaces required for the development |
| A | = | Floor area to which parking code is applied (i.e. Gross Lettable Floor Area [GLFA]) |
| Po | = | Spaces required per sq.m. commercial floor area according to Council's Parking Code in respect of occupant's vehicles (i.e. Spaces per sq.m. GLFA) |
| Pc | = | Spaces required per sq.m. commercial floor area according to Council's Parking Code in respect of customer's vehicles (i.e. Spaces per sq.m. GLFA) |
| Pr | = | Spaces required per sq.m retail floor area according to Council's Parking Code in respect of customer's and occupant's vehicles (i.e. spaces per sq.m gross lettable floor area, GLFA). |
| Op | = | On-site spaces provided by the development |
| R | = | \$ Contribution rate per space |

6.3.3 CONTRIBUTION RATE

The cost of construction of the total nett new car parking spaces required to accommodate the estimated new development within the Town Centre has been averaged to derive the contribution rate per space of construction of additional at – grade sealed car parking spaces as identified. The total estimated cost of providing additional car parking spaces is estimated to be \$1,950,000 (\$ 1993), and will provide a nett increase of 400 spaces.

The contribution rate is calculated as follows and indexed to the annual inflation rate:

$$\text{Rate/Space} = \frac{(\text{Total cost})}{\text{Nett spaces provided}} = \frac{\$1,950,000}{400}$$

| | |
|---------------------|-------------------|
| Contribution Rate = | \$4,875 per space |
|---------------------|-------------------|

6.4 SCHEDULE OF WORKS

Car parking surveys have indicated the usage rates of the various existing car parks at peak times. These surveys have been used as a guide to determining priorities for car park construction and the allocation of all day and limited time spaces. Priorities should be reassessed as necessary to account for actual growth to maintain a flexible approach to the changing car parking needs of the Town Centre.

SCHEDULE OF WORKS

St Marys Town Centre Carpark Construction Priorities

| Priority | Location | Property Acquisition | Estimated Cost incl. Acquisition (1992 \$) | Year (Indicative) |
|----------|--|--|--|-------------------|
| 1 | Block bounded by Carinya, West Lane, Kungala St & Crana St | 18 Carinya Ave 24 Carinya Ave | 370,000 | 1995 |
| 2 | Block bounded by Carinya, West Lane, Nariel St & Belar St | 58 Carinya Ave 66 Carinya Ave 68 Carinya Ave | 430,000 | 1997 |
| 3 | Block bounded by Gidley St, East Lane, King St & Chapel St | 39 Gidley St 41 Gidley St 43 Gidley St | 730,000 | 1999 |
| 4 | Block bounded by Carinya, West Lane, Nariel St & Camira St | 70 Carinya Ave 74 Carinya Ave 78 Carinya Ave | 420,000 | 2001 |

It should be noted that the programme may be reviewed and altered in order to provide parking as funds become available at a location most appropriate for new development and its location.

6.5 INDEXATION OF BUDGET

The Budget will be automatically indexed on a quarterly basis. Budget items that remain to be constructed at any quarter of the plan shall be indexed in the following manner:

NB = OB x CI/EI where NB is the new budget amount;

OB is the budget amount under review;

CI is the latest Consumer Price Index (All groups Sydney);

EI is the Consumer Price Index (All groups Sydney) which is applied at the date of adoption of this S94 Plan.

Budget items that have been constructed by Council at the date of quarterly review are carried forward in the adjusted budget at their actual cost plus any accrued interest payments on borrowed funds used to construct the works.

Budget items that have been constructed as Works-In-Kind at the date of quarterly review are carried forward in the adjusted budget at their credited cost.

7.0 METHOD AND TIMING OF PAYMENT

7.1 ISSUE OF CONSENT

Any development consent which requires the payment of a Section 94 contribution will include a condition stating the amount payable in monetary terms. Where a development proposal involves work in kind or the transfer of land to Council for public purposes identified in the Section 94 budget, the item and the corresponding amount allocated in the budget will be described in the conditions of consent.

7.2 SETTING AND INDEXATION OF CONTRIBUTIONS

Contributions are indexed on a quarterly basis separately from the schedule of works as follows:

A = B x (1+CRI)ⁿ where;

A is the contribution at time of payment;

B is the original contribution shown on the consent notice;

CRI is the projected contribution rate index (currently 1% per quarter. This index is based on projected inflation and interest rate movements);

n is the number of part or whole quarters from the date of consent notice to date of payment.

7.3 WORK IN KIND

7.3.1 CONDITIONS OF AGREEMENT

Documentation necessary for the verification of proposed credits will also be outlined in the consent and a reasonable time frame will be established in order to prevent any delay.

In addition, conditions of transfer including restoration and maintenance arrangements will be set out in the consent.

If a detailed design for work in kind has not been completed at the time of consent, which does not require amendment, the value and conditions will be outlined in the consent notice. The arrangements for this are discussed below.

7.3.2 VALUATION OF WORK IN KIND

At the time of detailed design and documentation, a cost estimate will be established. If this varies from the adopted Section 94 budget, steps will be taken to rectify the variation. Land which has not been redeveloped which benefits from the work in kind will be affected by any increase, and will similarly be affected by any decrease.

Once an agreement has been reached between Council and the developer about the revised cost, the developer may engage a contractor to undertake the works. The developer will remain liable for any cost overruns. Similarly, any economies in construction costs will flow to the developer, provided that the quality of the work is not diminished. No further verification of the cost of work will be necessary following the detailed design and estimation. However, a valuation will be required as the work will form part of Council's asset register.

7.4 TRANSFER OF LAND

Land to be transferred to Council for public purposes will be subject to valuation at the time when Development control Plans area prepared and the value in the budget including servicing and road construction will be nominated in the consent. Should the applicant wish to dispute the value nominated in the consent submission of a valuation report prepared by a registered valuer will be required.

7.5 CREDITS

Prior to work being commenced which would result in a developer entering into a position of credit, Council approval will be required. This may be done in conjunction with consent after assessment of likely Section 94 works.

Following satisfactory completion of works and valuation, the item will be acknowledged as a credit against Section 94 liabilities for the applicable section of the budget.

Where a developer (first developer) is in credit for an item and subsequent developer makes a payment, a refund will be given to the original developer where the funds are not required for expenditure in the immediate future. These refunds will be paid at the indexed rate.

7.6 TIMING OF PAYMENT

7.6.1 DEVELOPMENT APPLICATIONS INVOLVING BUILDING WORK

Payment is required at the time of building approval.

7.6.2 DEVELOPMENT APPLICATIONS WHERE NO BUILDING APPROVAL IS REQUIRED

Payment is required prior to occupation.

7.7 DEFERRED PAYMENT OF CONTRIBUTIONS

Council will give consideration to any request for deferment of contributions on its merits. However, the developer must make written application.

If council grants such a request it is conditional upon the applicant providing a suitable Bank Guarantee and Deed of Agreement.

A period for deferral of a contribution will be agreed between the applicant and Council prior to preparation of the Bank Guarantee. The period may be extended in circumstances acceptable to Council.

Interest will be charged on deferred contributions.

The amount of the Bank Guarantee will be calculated in the following manner:

G = C + C(I x P) where:

G is the amount of the Bank Guarantee;

C is the contribution owing at the time of linen release;

I is the estimated compound interest rate set by Council; and

P is the period covered by the guarantee.

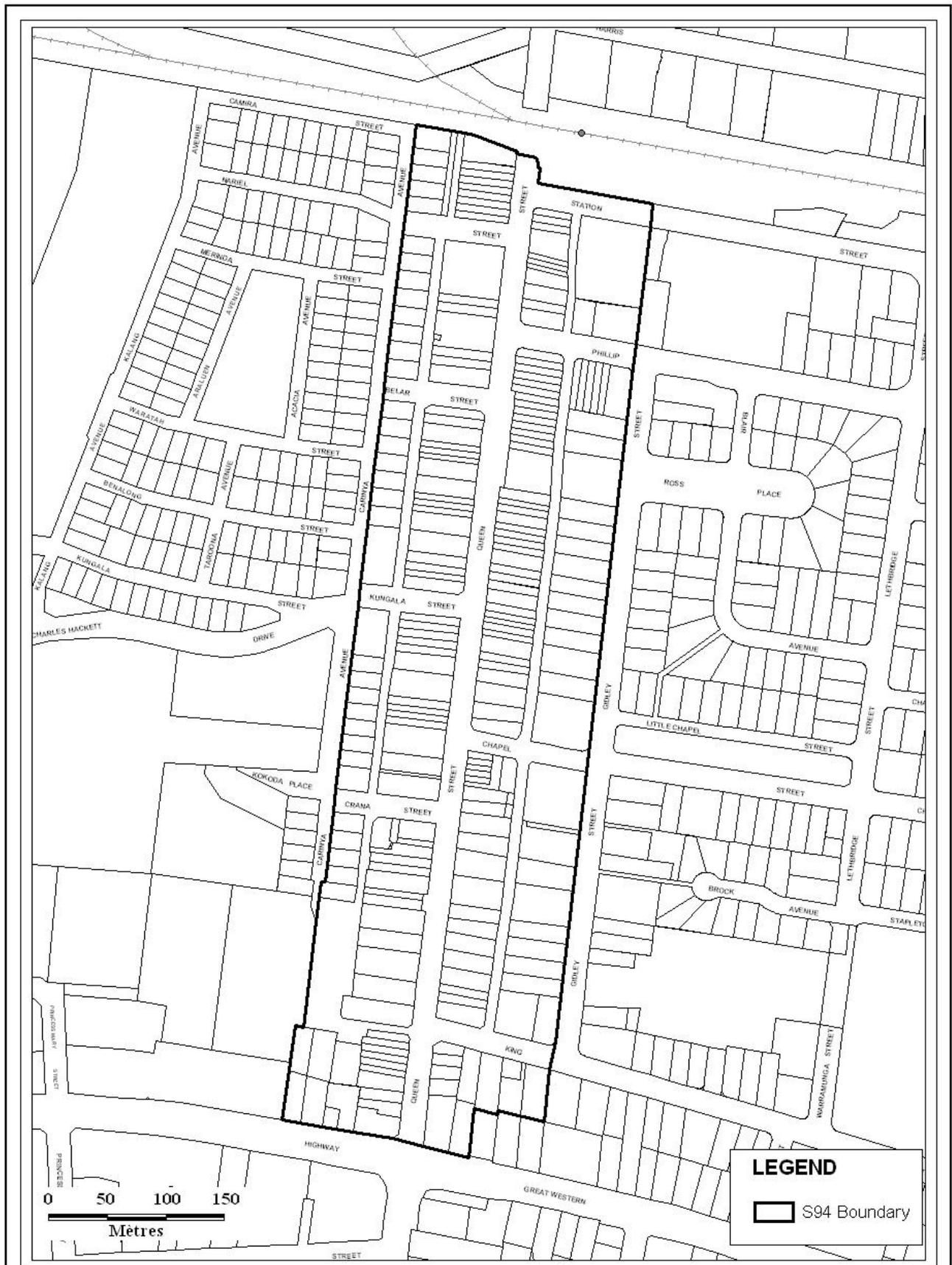
The guarantee will be terminated when the liability is met by the payment of cash or transfer of land or works.

The Deed of Agreement is to be prepared by Council's solicitors at full cost to the applicant.

Council also charges an administrative fee for deferred payment of contributions.

Should contributions not be paid by the due date, the Bank Guarantee will be called up by Council.

* * * *



St Marys Town Centre
Section 94 Contributions Plan
Fig. 1

Every care has been taken to ensure the information contained on this map is correct, however Council accepts no liability for error or misinterpretation of the information shown on this map.





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**St Marys Town Centre
Section 94 Contributions Plan
Fig. 1(a) Parking Supply**





**St Marys Town Centre
Section 94 Contributions Plan
Fig. 1(b) Land Acquisition**

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