



**Section 94A Developer Contribution Plans
Land within the Menai Centre
May 2008**





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PART A Levy Summary

The works schedule contained in Part 3 of this plan identifies the public facilities for which section 94A (s94A) levies will be required. Levies paid to Council will be applied towards meeting the cost of provision or augmentation of new public facilities. Part 3. provides a summary of new public facilities, which will be provided by Council over the next 10 years.

Summary schedule for section 94A contributions plan

Development		Levy	
Type	Area	Proposed cost of the development	Maximum percentage of the levy
All development that is not subject to a contribution required under s94 of the Environmental Planning and Assessment Act, 1979	Menai Centre See Appendix A	Up to \$100,000	Nil
		\$100,001–\$200,000	0.5 percent
		More than \$200,000	1.0 percent

PART B Expected Development and Demand for Public Facilities

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

- the likely resident and employment population growth from development of this precinct will require the provision of additional public facilities to meet additional demand;
- the likely resident and employment population growth from development of this precinct will diminish the standard and existing populations enjoyment of public facilities.

The S94A levy will enable Council to provide high quality and diverse public facilities to meet the expectations of existing and new residents of the Sutherland Shire.



1. Introduction

1.1 Overview

This plan is designed to collect developer contributions using the “flat rate levy” model as prescribed by the Environmental Planning and Assessment Act 1979, and Environmental Planning and Assessment Regulations 2000.

The Levies paid to Council will be put towards meeting the cost of improvement to facilities and amenities in the Menai Centre locality, as detailed in the works summary.

1.2 Application of this Plan

This plan applies to the area shown on the map in Appendix A.

The development contributions plan applies for development consent and applications for complying development certificates granted under Part 4 of the Environmental Planning and Assessment Act 1979.

1.3 Development to which this Plan applies

The Plan applies to development that is predominantly commercial. The Plan will not apply to development:

- where the proposed cost of carrying out the development is \$100,000 or less;
- 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 reuse 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.

1.4 When does this Development Contributions Plan Commence

This plan commences on May 27th 2008 and applies to development approved on or after this date. Amendments to this plan were adopted and in force on 21st of December, 2010 (EAP081-11). Amendments to this plan were adopted on the 4th of March, 2013 (DAP061-13) and in force on the 19th of March, 2013.



1.5 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 contribution under 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.

This Plan authorises the Council to impose conditions on development consents granted to development to which this Plan applies requiring the applicant to pay to the Council a levy of up to 1% of the proposed cost of carrying out the development, provided that the Council does not also impose on the consent a condition pursuant to section 94 of the Act. That is, if the Section 94A Contribution Plan applies, no other contribution plans can apply.

This Plan requires a certifying authority to impose a condition on a complying development certificate for development to which this Plan applies, requiring the applicant to pay to the Council a levy of up to 1% of the proposed cost of carrying out the development.

2. Rates

2.1 How will the Levy be Calculated?

The levy will be calculated as follows:

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

$$\text{Levy payable} = \text{rate} \times \$C$$

Where

Rate is the rate indicated in the table above
\$C is the proposed cost of carrying out the development

The criteria used to determine the cost of a development must comply with the criteria outlined by clause 25(j) of the Environmental Planning & Assessment Regulation 2000. 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.



The value of the works must be provided by the applicant at the time of the request. Proposals where the development cost is greater than \$1,000,000 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. Appendix 'A' outlines the cost summary reports to be submitted with a development application and where applicable, a Quantity Survey Report.

Without limitation to the above, Council may review the valuation of the 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.

2.2 When is the Levy Payable?

The levy is to be paid at the following times:

For development approved by a consent authority granting development consent:

1. For development that involves subdivision only – before the release of the linen plan/subdivision certificate
2. For development that involves subdivision and construction – before whichever is the first to occur:
 - the issue of a construction certificate, or
 - the release of the linen plan.
3. For development that involves only construction works – before the issue of a construction certificate
4. For development that involves a change of use – before whichever is the first to occur:
 - the occupation of the premises, or
 - the commencement of the use.

For development approved by the issue of a complying development certificate – before the commencement of construction approved by the Complying Development Certificate.

2.3 Deferred or Periodic Payment

Council may allow deferred or periodic payment of monetary section 94 contributions subject to consideration of a section 96 modification of consent, specifying the payment method, made before the time for payment of the contribution.



In deciding whether to allow deferred or periodic payment of a monetary s94 contribution, the Council will take into consideration the following matters:

- the reasons provided by the applicant requesting a deferred or periodic payment,
- whether allowing the deferred or periodic payment is likely to prevent the public facility being provided to meet the demands of development in a timely manner,
- whether the applicant has provided the Council with adequate security in relation to the deferred or periodic payment,
- any other relevant circumstances of the case.

The decision to accept a deferred or periodic payment is at the sole discretion of Council. Prior to a periodic payment being accepted, discussions must be held with Council's section 94 planner/administrator.

If the Council determines to allow the application, the arrangements relating to the deferred or periodic payment will not take effect until the applicant has entered into a written agreement with the Council reflecting the terms of the Council's approval. If approved, a condition relating to the deferred or periodic payment will be placed on the subject amended development consent.

Applicants may apply to pay contributions through periodic payments or defer the payment for a set period by way of a bank guarantee as detailed below.

Set Time Period Deferment

A set time period deferment requires contributions to be paid within 12 months of the date of issue of the construction certificate or prior to issue of the occupation certificate, whichever comes first. A deferred payment will only be accepted by way of a bank guarantee from an Australian bank for the total or outstanding contribution amount plus interest. A Deed of Agreement entered into by the applicant and Council must be executed prior to the release of the Construction Certificate.

Bank Guarantee

The guarantee requires the bank to unconditionally pay the guaranteed sum to Council at the time stipulated in the agreement. All costs incurred in the establishment, operation, administration or discharge of the bank guarantee, are borne by the applicant. The bank's obligations are discharged when payment to the Council is made in accordance with the guarantee, or when Council notifies the bank in writing that the guarantee is no longer required, or if the related consent lapses.

The formula applied to all bank guarantees for section 94 contributions is as follows:

$$\text{Bank Guarantee Amount} = C(1+i)^n + A$$

<i>C</i>	section 94 contribution that is due
<i>i</i>	interest foregone by Council calculated at the current overdraft rate (%)
<i>n</i>	period of deferral in years
<i>A</i>	Council's current administration charge



Periodic Payment

Periodic Payment Process

A periodic payment deferment requires contributions to be paid within 12 months of the date of issue of the construction certificate or prior to issue of the occupation certificate, whichever comes first. A Deed of Agreement entered into by the applicant and Council must be executed prior to the release of the Construction Certificate and a payment schedule created and administered by Council.

$$\text{Periodic Payment Amount} = C(1+i)^n + A$$

<i>C</i>	section 94 contribution that is due
<i>i</i>	interest foregone by Council calculated at the current overdraft rate (%)
<i>n</i>	period of deferral in years
<i>A</i>	Council's current administration charge

Council may accept periodic payment by way of instalments when the development is staged and the instalment is paid before the works commence on any stage of the development at a pro-rata amount to the overall development.

Indexation

Deferred or periodic payment is subject to indexation which is charged on the 1st of July each year on the balance outstanding at the time.

Condition of Consent

If Council allows and application for deferred or periodic payment, an amended condition of consent will be placed on the Development Consent:

Payment shall be made in accordance with a Deed of Agreement, in accordance with Council requirements and the provisions of the Plan. The Deed of Agreement must be executed prior to the issue of a Construction Certificate. Full payment of outstanding contributions is required prior to the release of the Strata Plan or Occupation Certificate or within 12 months of the Deed of Agreement, whichever comes first. Note: Interest is payable at the current Council overdraft rate. This arrangement is subject to indexation which is charged on the 1st July each year on the balance outstanding at the time.

2.4 Pooling of Levies

This plan expressly authorises S94A levies paid to be pooled and applied progressively or otherwise for those purposes. The priorities for expenditure are shown in the works schedule.

2.5 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 a development



consent, or issue a Complying Development Certificate, unless it has verified that any 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 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 Council. In such cases, Council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

In accordance with section 94EC (1) of the EP&A Act, accredited certifiers must impose a condition upon any Complying Development Certificates (which satisfy the criteria under this plan), which requires the payment of monetary contributions in accordance with the provisions of this plan. The standard condition contained in Appendix D is to be applied to all applicable Complying Development Certificates.

It is the professional responsibility of accredited certifiers to accurately calculate the contribution and to apply the section 94 condition correctly. The method for calculating the amount of the monetary contribution is to be determined is set out in Section 2.1 of this plan.

2.6 Alternatives to the Levy

An applicant may only elect to forgo the payment of monetary contributions upon effected development through the following means:

- a) by Council accepting an offer by an applicant to satisfy the contribution by carrying out works in kind, but only where the facility is identified in the works program and it is constructed by the developer to Council's standards and then transferred to Council. In these circumstances, Council will only transfer paid contributions on receipt of invoices not exceeding the amount already collected or committed by the fund.
- b) by both Council and the applicant entering into a written planning agreement in accordance with section 93F of the Act, whose terms and conditions are voluntarily agreed to and signed by both parties. The agreement:
 - (i) may be for the payment of a monetary contribution, the dedication of land free of cost, any other public benefit, or any combination of these, to be used for or applied toward a public purpose; and
 - (ii) is not invalid by reason only that there is no connection between the development and the works or expenditure of any money it proposes.



3. Works Program and Expected Development and Demands for Public Facilities

Money paid to the Council under a condition authorised by this plan is to be applied by the Council towards meeting the cost of the public facilities and public domain improvements as listed in the table below.

Works Program			
Project Description	Estimated Costs (\$ as at 2006)	Estimated Time Frame	Priority for Expenditure
<u>Embellishment of public open space, foot path upgrades and street plantings in Menai Centre</u>	\$588/sq m	Upon commercial development in Centre	NA



4. Adjustments to and Review of Section 94A Contributions

4.1 Indexation

Contributions as required by this plan will be adjusted at the time of payment to reflect changes in construction costs between the approval of the development and the payment of the contribution. This adjustment will be conducted quarterly and contributions indexed in accordance with the Implicit Price Deflator (IPD) for Construction. These figures are produced by the Australian Bureau of Statistics in its publication "Australian National Account Income and Expenditure" and are published on a quarterly basis.

The method of indexing the contribution rates is in accordance with the following formula:

$$\text{New Contribution Rate} = \text{Current Contribution} \times \frac{\text{Current IPD}}{\text{Previous years IPD}}$$

The same basic formula is also used to index outstanding contributions under this plan:

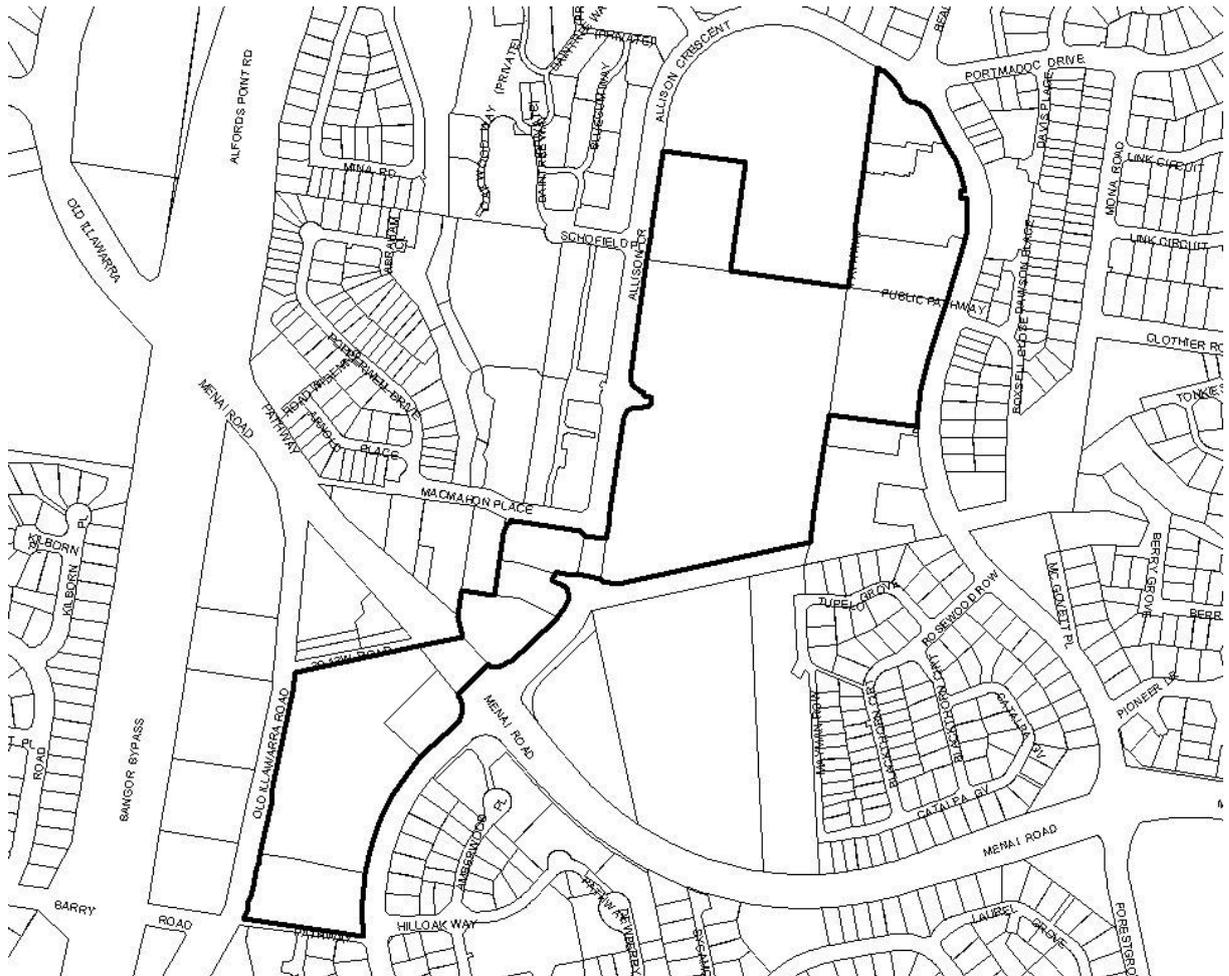
$$\text{New Contribution Rate} = \text{Current Outstanding Contribution} \times \frac{\text{Current IPD}}{\text{Previous years IPD}}$$

4.2 Review of the Section 94A Contributions Plan

It is intended that a comprehensive review of this contribution plan will be carried out in 2016. The review will examine new development trends, the status of the proposed work schedule and the overall effectiveness of this plan in delivering the desired outcomes of Council.



Appendix A – Location of Menai Urban Centre





Appendix B – Cost Summary Report

DEVELOPMENT APPLICATION No.

REFERENCE:

CONSTRUCTION CERTIFICATE No.

DATE:

APPLICANT'S NAME:

APPLICANT'S ADDRESS:

DEVELOPMENT NAME:

DEVELOPMENT ADDRESS:

ANALYSIS OF DEVELOPMENT COSTS:

<i>Demolition and alterations</i>	\$	<i>Hydraulic services</i>	\$
<i>Structure</i>	\$	<i>Mechanical services</i>	\$
<i>External walls, windows and doors</i>	\$	<i>Fire services</i>	\$
<i>Internal walls, screens and doors</i>	\$	<i>Lift services</i>	\$
<i>Wall finishes</i>	\$	<i>External works</i>	\$
<i>Floor finishes</i>	\$	<i>External services</i>	\$
<i>Ceiling finishes</i>	\$	<i>Other related work</i>	\$
<i>Fittings and equipment</i>	\$	<i>Sub-total</i>	\$

<i>Sub-total above carried forward</i>	\$
<i>Preliminaries and margin</i>	\$
Sub-total	\$
<i>Consultant Fees</i>	\$
<i>Other related development costs</i>	\$
Sub-total	\$
<i>Goods and Services Tax</i>	\$
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.

**Section 94 A Developer
Contribution Plans
Land within the Menai Centre
May 2008**

Signed: _____

Name: _____

Position and Qualifications:

Date: _____



Appendix C - Registered* Quantity Surveyor's Detailed Cost Report
Development Cost in excess of \$1,000,000.00

*A member of the Australian Institute of Quantity Surveyors

DEVELOPMENT APPLICATION No.
REFERENCE:
CONSTRUCTION CERTIFICATE No.

	DATE:

APPLICANT'S NAME:

APPLICANT'S ADDRESS:

DEVELOPMENT NAME:

DEVELOPMENT ADDRESS:

DEVELOPMENT DETAILS:

Gross Floor Area – Commercial	m ²	Gross Floor Area – Other	m ²
Gross Floor Area – Residential	m ²	Total Gross Floor Area	m ²
Gross Floor Area – Retail	m ²	Total Site Area	m ²
Gross Floor Area – Car Parking	m ²	Total Car Parking Spaces	
Total Development Cost	\$		
Total Construction Cost	\$		
Total GST	\$		

ESTIMATE DETAILS:

Professional Fees	\$	Excavation	\$
% of Development Cost	%	Cost per square metre of site area	\$ /m ²
% of Construction Cost	%	Car Park	\$
Demolition and Site Preparation	\$	Cost per square metre of site area	\$ /m ²
Cost per square metre of site area	\$ /m ²	Cost per space	\$ /space
Construction – Commercial	\$	Fit-out – Commercial	\$
Cost per square metre of site area	\$ /m ²	Cost per m ² of commercial area	\$ /m ²
Construction – Residential	\$	Fit-out – Residential	\$
Cost per square metre of residential area	\$ /m ²	Cost per m ² of residential area	\$ /m ²
Construction – Retail	\$	Fit-out – Retail	\$
Cost per square metre of retail area	\$ /m ²	Cost per m ² of retail area	\$ /m ²



I certify that I have:

- inspected the plans the subject of the application for development consent or construction certificate.
- prepared and attached an elemental estimate generally prepared in accordance with the Australian Cost Management Manuals from the Australian Institute of Quantity Surveyors.
- calculated the development costs in accordance with the definition of development costs in the S94A Development Contributions Plan of the council of [insert] at current prices.
- included GST in the calculation of development cost.
- measured gross floor areas in accordance with the Method of Measurement of Building Area in the AIQS Cost Management Manual Volume 1, Appendix A2.

Signed: _____

Name: _____

Position and Qualifications:

Date: _____



Appendix D – Standard section 94 condition for complying development

In accordance with section 94EC(1) of the Environmental Planning and Assessment Act 1979 and Section 2.6 of this plan, accredited certifiers must impose the following condition on complying development certificates where a contribution is required in accordance with this plan.

Pursuant to section 94EC of the Environmental Planning and Assessment Act 1979, and Council's Section 94A Contribution Plan for Miranda Centre, a contribution of \$####⁽¹⁾ must be paid to Sutherland Shire Council towards the cost of works as outlined in the contribution plan. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Section 94A Development Contributions Plan. The amount payable of monetary s.94 contributions will be indexed on 1 July each year in accordance with the Contribution Plan and the following formula:

$$\text{New Contribution Rate} = \text{Current Contribution} \times \frac{\text{Current IPD}}{\text{Previous years IPD}}$$

Payment must be made to Council before the commencement of construction approved by the Complying Development Certificate.

The Contributions Plan may be inspected or a copy purchased at the Customer Service Counter in Council's Administration Centre, 4-20 Eton Street, Sutherland during office hours.

Notes:

- (1) Insert the total amount of contributions using the calculation methodology outlined in 2.1 of this Plan.