

# THE NORTH KELLYVILLE PRECINCT

## SECTION 94A CONTRIBUTIONS PLAN

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THE  
HILLS  
Sydney's Garden Shire



May 2013

### The Hills Shire Council

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## INTRODUCTION

Section 94A of the *Environmental Planning and Assessment Act 1979* (the Act) contains provisions that allow Council to impose, as a condition of development consent or as a condition of a complying development certificate, a requirement that the applicant pay a levy of the percentage of the proposed cost to carry out the development.

For Council to impose a condition under section 94A, a contributions plan that complies with clause 27(1) of the *Environmental Planning and Assessment Regulation 2000* (the Regulation) must be in place.

The North Kellyville Section 94A Contributions Plan authorises Council to impose a condition of development consent or a complying development certificate to require the payment of a fixed levy.

The quantity of the levy and the types of development application which attract the levy are set out in the clauses of this plan.

Levies paid to Council will be applied towards the provision, extension or augmentation of public facilities, or towards recouping the cost of their provision, extension or augmentation.

Nothing in this Plan is intended to limit Council's power to impose a condition under section 80A of the Act or section 97 of the *Local Government Act 1993*.

## PART A: Summary Schedule

This plan is called The North Kellyville Precinct Section 94A Contributions Plan (Contributions Plan).

The works program contained in Schedule 3 of this Contributions Plan identifies three (3) public facilities that will be funded by development occurring in North Kellyville.

The following table provides a summary of the rates applicable to development under this Contributions Plan:

Proposed cost of the development	Development (eligible for the levy) <u>located outside the B2 Local Centre.</u>	Development (eligible for the levy) <u>located within the B2 Local Centre.</u>
Up to \$100,000	Nil	Nil
\$100,001 - \$200,000	0.5%	0.5%
More than \$200,000	1%	1%

**Table 1: S94A development contribution levy rates**

## **PART B: Administration and operation of the plan**

### **1. Name of this plan**

This plan is called The North Kellyville Precinct Section 94A Contributions Plan (Contributions Plan). This contributions plan commences on the date upon which a public notice was published pursuant to the Regulation.

### **2. Purpose of this plan**

The purpose of this Contributions Plan is:

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

### **3. Land to which this plan applies**

This plan applies to land within The Hills Shire as shown in Figure 1. This contribution plan applies to applications for development consent and applications for complying development certificates under Part 4 of the Environmental Planning and Assessment Act 1979. The rates for different types of development are set out in *Table 1: S94A development contribution levy rates*.

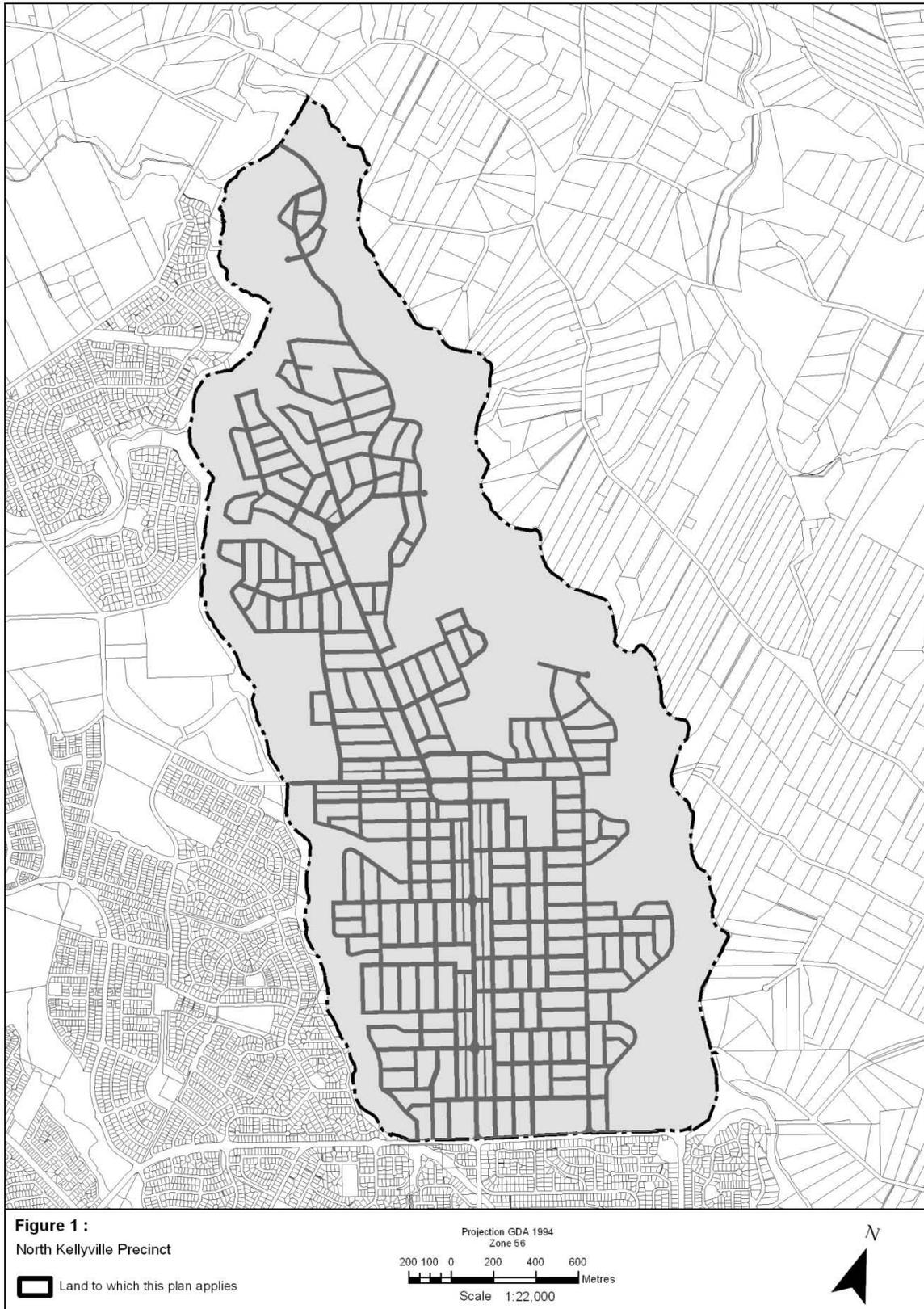
### **4. Relationship to existing Section 94 Plans**

This plan does not repeal any existing Section 94 or Section 94A Contributions plans applying in the Hills Shire Council Local Government Area, and so those plans continue to apply.

### **5. Development to which this plan applies**

This plan applies to all applications for development consent and complying development certificates required to be made by or under Part 4 of the Act in respect of development on land to which this plan applies, other than applications made by or on behalf of Council.

**Figure 1:** This plan applies to land located within the North Kellyville Precinct boundary.



**6. Section 94A of the Act**

Section 94A of the Act provides as follows: -

**94A Fixed development consent levies**

1. A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contribution plan, of the proposed cost of carrying out the development.
2. A consent authority cannot impose as a condition of the same development consent a condition under this section as well as a condition under Section 94.
3. Money required to be paid by a condition imposed under this section is to be applied towards the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation). The application of the money is subject to any relevant provisions of the contribution plan.
4. A condition imposed under this section is not invalid by reason only that there is no connection between the development, the subject of the development consent and the object of expenditure of any money required to be paid by the condition.

**7. Council may require payment of the levy as a condition of development consent**

This plan authorises Council to grant consent to development to which this plan applies subject to a condition requiring the applicant to pay to Council a levy of the proposed cost of carrying out the development, provided that Council does not also impose on the consent a condition pursuant to section 94 of the Act. The rate of the levy is to be calculated as follows:

Proposed cost of the development	Development (eligible for the levy) located outside the B2 Local Centre.	Development (eligible for the levy) located within the B2 Local Centre.
Up to \$100,000	Nil	Nil
\$100,001 - \$200,000	0.5%	0.5%
More than \$200,000	1%	1%

**Table 2: S94A development contribution levy rates**

## **8. Exemptions to the levy**

Council may allow for the following exemptions (partial or full) from the payment of a levy:

- (a) An application for the purpose of disabled access;
- (b) An application for the sole purpose of providing affordable housing;
- (c) An application for the sole purpose of reducing the consumption of mains-supplied potable water, or reducing the energy consumption of a building;
- (d) An application for the sole purpose of the adaptive reuse of an item of environmental heritage;
- (e) An application other than the subdivision of land, where a condition under section 94 of the Act has been imposed under a previous development consent relating to the subdivision of the land on which the development is proposed to be carried out; and
- (f) An application which is solely for the purpose of a public library, community/education facility, child care facility, places of public worship, public hospitals, police stations and fire stations.

In the case of item (f) above, for such claims to be considered, any such development will need to include a comprehensive submission arguing the case for exemption and including details of the mechanism ensuring that such development will remain in the form proposed in the future.

## **9. Construction certificates and the obligations of accredited certifiers**

In accordance with clause 146 of the Regulations, 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 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 Regulation. Failure to follow this procedure may render such a certificate invalid.

The only exceptions to the requirement are where Council has agreed in writing to a works in kind, material public benefit, dedication of land, or deferred payment arrangement. In such cases, Council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

## **10. Calculation of proposed cost of development**

Clause 25J of the Regulation sets out how the proposed cost of carrying out development is to be determined. That clause provides as follows: -

### ***25J Section 94A levy – determination of proposed cost of development***

- (1) *The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 94A levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:*

- (a) *if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,*
  - (b) *if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,*
  - (c) *if the development involves the subdivision of land the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.*
- (2) *For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.*
- (3) *The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:*
- (a) *the cost of the land on which the development is to be carried out,*
  - (b) *the costs of any repairs to any building or works on the land that are to be retained in connection with the development,*
  - (c) *the costs associated with marketing or financing the development (including interest on any loans),*
  - (d) *the costs associated with legal work carried out or to be carried out in connection with the development,*
  - (e) *project management costs associated with the development,*
  - (f) *the cost of building insurance in respect of the development,*
  - (g) *the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),*
  - (h) *the costs of commercial stock inventory,*
  - (i) *any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law,*
  - (j) *the costs of enabling access by disabled persons in respect of the development,*
  - (k) *the costs of energy and water efficiency measures associated with the development,*
  - (l) *the cost of any development that is provided as affordable housing,*
  - (m) *the costs of any development that is the adaptive reuse of a heritage item.*
- (4) *The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date the levy is required to be paid.*

*(5) To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.*

## **11. Indexation of development costs**

Contributions required as a condition of consent under the provisions of this plan will be adjusted at the time of payment of the contribution in accordance with the following formula:

$$\text{IDC} = \text{ODC} \times \text{CP2}/\text{CP1}$$

Where:

**IDC** = the Indexed Development Cost.

**ODC** = the Original Development Cost estimated by Council.

**CP2** = the Consumer Price Index All Group Index Number for Sydney at the time a levy is paid.

**CP1** = the Consumer Price Index All Group Index Number for Sydney at the date the original development cost was submitted to Council.

## **12. Cost estimate reports must accompany an application for a complying development certificate or a construction certificate**

An application for a development application or a complying development certificate is to be accompanied by a report, prepared at the applicant's cost in accordance with this clause, setting out an estimate of the proposed cost of carrying out the development for the purposes of clause 25J of the Regulation.

The following types of report are required:

- Where the estimate of the proposed cost of carrying out the development is less than \$500,000 – a cost summary report in accordance with Schedule 1; or
- Where the estimate of the proposed cost of carrying out the development is \$500,000 or more – a detailed cost report in accordance with Schedule 2.

## **13. Preparation of cost estimates reports**

For the purpose of clause 25J(2) of the Regulation and clause 12 of this plan, the following persons are approved by Council to provide an estimate of the proposed cost of carrying out development in the following circumstances:

- Where the proposed development cost is less than \$500,000 - a person who, in the opinion of Council, is suitably qualified to provide a cost summary report; or
- Where the proposed development cost is \$500,000 or more – a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors.

Upon reviewing a cost summary report, Council may require a further estimate to be provided by a registered quantity surveyor at the applicant's cost. Council may, at the applicant's cost, engage a person referred to in this clause to review a report submitted by an applicant in accordance with clause 13.

#### **14. How will Council apply the money obtained by the levy?**

Money paid to Council under a condition authorised by this plan is to be applied by Council towards meeting the cost of public facilities that will or have been provided within areas listed in Schedule 4.

#### **15. Funding priorities**

Subject to s93E of the Act, the public facilities listed in Schedule 4 are to be provided in accordance with the staging set out in that Schedule.

#### **16. Pooling of levies**

For the purposes of s93E(2) of the Act, this plan authorises money to be obtained from levies paid in respect of different developments to be pooled and applied by Council progressively towards the public facilities listed in Schedule 3 in accordance with the staging set out in that Schedule.

#### **17. Timing of payment**

A levy to be paid by a condition authorised by this plan must be paid to Council at the time specified in the condition. If no time is specified, the levy must be paid prior to the issue of a construction certificate or complying development certificate.

#### **18. Payment of the levy as a Condition**

Certifying authority (Council or accredited certifier) must require payment of the levy as a condition of issuing a complying development certificate

If development consent has been granted to the carrying out of development subject to a condition authorised by this plan, then this plan requires a certifying authority (the Council or an accredited certifier) to issue a complying development certificate in respect of development to which this plan applies subject to a condition requiring the applicant to pay to the Council a levy in accordance with this plan.

If a Ministerial direction under s94E is in force, this Plan authorises the certifying authority to issue a complying development certificate subject to a condition which is in accordance with that direction.

#### **19. Deferred or periodic payments**

Council does not allow deferred or periodic payment of levies authorised by this plan.

#### **20. Alternatives to payment**

If an applicant for development consent seeks to make a contribution towards the provision of public facilities to meet development other than by payment of a levy or development contributions, the applicant may adopt one of the following procedures.

##### **a) Offer made to Council as part of a development application**

If an applicant does not wish to pay the s94A levy in connection with the carrying out of development, the applicant may include in the relevant

development application an offer to carry out works or provide a material public benefit towards works to which the levy was to be applied.

Council will consider the offer as part of its assessment of the development application. If Council agrees to the arrangement and grants consent to the application, it will substitute a condition requiring payment of a levy under s94A for a condition of consent under s80A of the Act requiring the works to be carried out or the material public benefit to be provided. If Council does not agree to the alternative arrangement, it may grant consent subject to a condition authorised by this plan requiring payment of a levy.

In assessing the applicant's offer, Council will have regard to the requirements of the current Practice Notes issued by the NSW Government in the Revised Development Contributions Manual (DIPNR 2005), or any equivalent document issued by the Department of Planning & Infrastructure.

**b) Offer made to Council following the grant of development consent requiring payment of a levy**

If development consent has been granted to the carrying out of development subject to a condition authorised by this plan to pay a levy, the applicant must comply with the condition unless it is modified under s96 of the Act.

If the applicant does not wish to pay the levy, the applicant may make an application to Council under s96 of the Act to modify the consent by substituting the condition requiring payment of the levy with a condition requiring the carrying out of works or the provision of a material public benefit towards the public purpose to which the levy was to be applied.

If Council approves the application, the applicant will be bound by the substituted condition. If Council does not approve the application, the applicant will remain bound by the condition authorised by this plan requiring payment of the levy.

In assessing the s96 application, Council will have regard to the requirements of the current Practice Notes issued by the NSW Government in the Revised Development Contributions Manual (DIPNR 2005), or any equivalent document issued by the Department of Planning & Infrastructure.

**c) Offer to enter into a voluntary planning agreement**

If an applicant does not wish to pay a levy in connection with the carrying out of development, the applicant may offer to enter into a voluntary planning agreement with Council under s93F of the Act in connection with the making of a development application.

Under the planning agreement, the applicant may offer to pay money, dedicate land, carry out works, or provide other material public benefits for public purposes. Those purposes need not relate to the impacts of the applicant's development nor to the items listed in Schedule 4.

The applicant's provision under a planning agreement may be additional to or instead of paying a levy in accordance with a condition of development consent authorised by this plan. This will be a matter for negotiation with Council.

The offer to enter into the planning agreement together with a copy of the draft agreement should accompany the relevant development application.

Council will publicly notify the draft planning agreement and an explanatory note relating to the draft agreement along with the development application and will consider the agreement as part of its assessment of that application.

If Council agrees to enter into the planning agreement, it may impose a condition of development consent under s93I(3) of the Act requiring the agreement to be entered into and performed. If Council does not agree to enter into the planning agreement, it may grant consent subject to a condition authorised by this plan requiring the payment of a levy.

## **20. Savings and Transitional Arrangements**

A development application which has been submitted prior to the adoption of this plan but not determined shall be subject to the provisions of this plan.

## **PART C: Expected development and demand for public facilities**

This part broadly discusses the relationship between the expected types of development in Council's area and the demand for additional public amenities and services to meet that development.

The expected types of development include but are not limited to:-

- Non-residential development;
- Commercial development;
- Retail development;
- Mixed use development;
- Alterations and additions;
- Subdivisions; and
- Change of use.

The relationship between expected development and the demand for public facilities is established through:-

- Population projections derived from the precinct planning process forecasts a residential population of 15,563 persons will be generated by the creation of 5185 new dwellings, and that an employment base of 729 employees will be generated by the Local Centre and the two (2) Neighborhood Centres by the year 2021.
- As such, it is likely that the incoming resident population and employment base will generate additional demand for public facilities.

The Hills Shire Council is committed to a sustainable local government area, safeguarding the economic, social, cultural and environmental well being of current and future generations. The s94A levy will enable Council to provide high quality and diverse public facilities to meet the expectations of existing and future residents of the Shire.

The additional public facilities to be provided to meet the expected future development are set out in Schedule 3 – Works Program.

## **PART D: References, Definitions & Schedules**

### **References**

The following reference documents have been utilised in the preparation of this Section94A Plan:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Baulkham Hills Local Environmental Plan 2005
- Draft The Hills Local Environmental Plan 2010
- The Hills Shire Council Employment Lands Direction 2008
- The Hills 2026 Community Strategic Direction
- Department of Infrastructure, Planning and Natural Resources – Development Contribution Practice Notes – July 2005
- Department of Planning – Circular PS06-020 6 December 2006 - Changes to the Application of Section 94A of the EP&A Act - Ministerial Direction

- Department of Planning - Draft local development contributions guidelines, 2009

## **Definitions**

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

- **ABS** means the Australian Bureau of Statistics;
- **Capital Investment Value** has the same meaning as that detailed in the Environmental Planning & Assessment Regulation 2000;
- **Act** means the Environmental Planning and Assessment Act 1979;
- **Council** means The Hills Shire Council;
- **Levy** means a levy under s94A of the Act authorised by this plan;
- **Public facility** means a public amenity or public services; and
- **Regulation** means the Environmental Planning and Assessment

## Schedule 1 – Cost Summary Report

The Hills Shire Council		PO Box 75 CASTLE HILL NSW 1765 Phone: 9843 0555 Fax: 9843 0409
<b>Cost Summary Report No.1                  Development Cost Less Than \$500,000</b>		

Development Application No. \_\_\_\_\_ Your Reference \_\_\_\_\_  
 Complying Development Certificate No. \_\_\_\_\_ Date \_\_\_\_\_  
 Construction Certificate No. \_\_\_\_\_

Applicant's Name: \_\_\_\_\_

Applicant's Address: \_\_\_\_\_

Development Address: \_\_\_\_\_

Description of Development: \_\_\_\_\_

**Analysis of Development Costs:**

Demolition and alteration	\$	Hydraulic services	\$
Structure	\$	Mechanical services	\$
External wall, windows and doors	\$	Fire services	\$
Internal walls, screens and doors	\$	Lift services	\$
Wall finishes	\$	External works	\$
Floor finishes	\$	External services	\$
Ceiling finishes	\$	Other related work	\$
Fittings and equipment	\$	Professional/Consultant fees (excl. Project Management)	\$
<b>Total Development Costs (inc GST) (Sec 94A is calculated on this amount)</b>	<b>\$</b>		

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 costs.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position and Qualifications: \_\_\_\_\_

Date: \_\_\_\_\_

## Schedule 2 – Detailed Cost Report

The Hills Shire Council		PO Box 75 CASTLE HILL NSW 1765 Phone: 9843 0555 Fax: 9843 0409
<b>Cost Summary Report No.2- Registered* Quantity Surveyor's                  Detailed Cost Summary Report Development Cost of \$500,000 or More</b>		

Development Application No. \_\_\_\_\_ Your Reference \_\_\_\_\_  
 Complying Development Certificate No. \_\_\_\_\_ Date \_\_\_\_\_  
 Construction Certificate No. \_\_\_\_\_

Applicant's Name: \_\_\_\_\_

Applicant's Address: \_\_\_\_\_

Development Address: \_\_\_\_\_

Description of Development: \_\_\_\_\_

**Development Details:**

Gross Floor Area – Commercial	m2	Total Gross Floor Area – Other	m2
Gross Floor Area – Residential	m2	Total Gross Floor Area	m2
Gross Floor Area – Retail	m2	Total Site Area	m2
Gross Floor Area – Car Parking	m2	Total Car Parking Spaces	
<b>Total Development Cost</b>	\$		
<b>Total Construction Cost</b>	\$		
<b>Total GST</b>	\$		

**Estimate Details:**

<b>Professional Fees</b>	\$	<b>Excavation</b>	\$
% of Development Cost	%	Cost per square metre of site area	\$/m2
% of Construction Cost	%	<b>Car Park</b>	\$
<b>Demolition and Site Preparation</b>	\$	Cost per square metre of site area	\$/m2
Cost per square metre of site area	\$/m2	Cost per space	\$/space
<b>Construction – Commercial</b>	\$	<b>Fit-out – Commercial</b>	\$
Cost per square metre of commercial area	\$/m2	Cost per square metre of commercial area	\$/m2
<b>Construction – Residential</b>	\$	<b>Fit-out – Residential</b>	\$
Cost per square metre of residential area	\$/m2	Cost per square metre of residential area	\$/m2
<b>Construction – Retail</b>	\$	<b>Fit-out – Retail</b>	\$
Cost per square metre of retail area	\$/m2	Cost per square metre of retail area	\$/m2

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 The Hills at current prices.
- Included GST in the calculation of development costs.
- Measured gross floor areas in accordance with the Method of Measurement of Building Area in the AIQS Cost Management Manual Volume, Appendix A2.

Name: \_\_\_\_\_ Signed: \_\_\_\_\_

Position and Qualifications: \_\_\_\_\_ Date: \_\_\_\_\_

**\* Must be a member of the Australian Institute of Quantity Surveyors**

### Schedule 3 – Works Schedule

<b>Works Item</b>	<b>Description</b>	<b>Priority</b>	<b>Capital</b>	<b>Land</b>	<b>TOTAL</b>
NKT03	Signalisation of Hezlett Road and Withers Road intersection	2	\$363,227	\$0	\$363,227
NKT04	Signalisation of Hezlett Road and proposed bypass	2	\$290,582	\$0	\$290,582
CWB03	Basin 3 (Cattai Creek)	2	\$495,759	\$0	\$495,759
	<b>TOTAL</b>		<b>\$1,149,567</b>	<b>\$0</b>	<b>\$1,149,567</b>

<b>Priority Level</b>	<b>% of completed commercial floor space</b>	<b>Anticipated timeframe for delivery following the commencement of this plan</b>
1	8	3 years
2	54	7 - 11 years
3	97 -100	12 -15 years

## Schedule 4 – Works Program Map

Capital works items listed in the plan are located in proximity to the B2 Local Centre, as shown in Figure 2 below:

