

Section 94A
Levy
Contributions
Plan

BROKEN HILL

CITY COUNCIL

**AUSTRALIA'S FIRST
HERITAGE LISTED CITY**

QUALITY CONTROL		
KEY DIRECTION	4. Our Leadership	
OBJECTIVE	4.1 Openness and Transparency in Decision Making	
FUNCTION	Leadership and Governance	
STRATEGY	4.1.13 Maintain good governance and best practice methods and ensure compliance with various guidelines and legislation	
FILE REFERENCE No	11/529	TRIM No D16/30799
RESPONSIBLE OFFICER	Manager Building Development and Compliance	
REVIEW DATE	July 2018	
DATE	ACTION	MINUTE No
April 2014	Adopted	44636
July 2016	Adopted	45291
NOTES		
ASSOCIATED DOCUMENTS		

Privacy Statement

Adopted July 27, 2016 Minute No. 45291

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PART 1 ADMINISTRATION AND OPERATION

1. What is the name of this plan?

This Plan is called *Broken Hill City Council Section 94A Levy Contributions Plan*.

2. When does this plan commence?

This Plan commences on the date public notice of the Council's approval of this Plan is given in a newspaper circulating in the Council's area.

3. Purposes of this plan

The purposes of this Plan are:

- to authorise the Council to impose, as a condition of development consent, a requirement that the applicant pay to the Council a levy determined in accordance with this Plan,
- to require a certifying authority (the Council or an accredited certifier) to impose, as a condition of issuing a complying development certificate, a requirement that the applicant pay to the Council a levy determined in accordance with this Plan, and
- to govern the application of money paid to the Council under a condition authorised by this Plan.

4. What does Section 94A of the Act provide?

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 contributions 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.*
- 2A** *A consent authority cannot impose a condition under this section in relation to development on land within a special contributions area without the approval of:*
 - a. *the Minister, or*
 - b. *a development corporation designated by the Minister to give approvals under this subsection.*
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 contributions 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.*

5. Land to which this Plan applies

This Plan applies to all land within the Broken Hill City Council local government area.

6. Development to which this Plan applies

This Plan applies to development on land to which this Plan applies that requires development consent or a complying development certificate under the Act except:

1. development, 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 the purpose for which that condition was imposed is a purpose towards which a levy under this Plan may be applied, or
2. development involving alterations and additions to, or the rebuilding of, a building used for residential purposes or a building that is used for a purpose that is ancillary or incidental to such a purpose, unless the development involves an enlargement, expansion or intensification of the use of the building or the land on which the building is, or is proposed to be, situated.

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

Subject to the Act and to any direction of the Minister under section 94E of the Act which is in force from time to time, this Plan authorises the Council to grant consent to development to which this Plan applies subject to a condition requiring the applicant to pay to the Council a levy of 1% of the proposed cost of carrying out the development

If a Ministerial direction under section 94E is in force, this Plan authorises the Council to grant consent to development subject to a condition which is in accordance with that direction.

Any Ministerial direction under section 94E of the Act which has been made and is in force from time to time is included in the Attachment to this Plan.

8. Certifying authority must require payment of the levy as a condition of issuing a complying development certificate

Subject to the Act and to any direction of the Minister under section 94E of the Act which is in force from time to time, 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 of 1% of the proposed cost of carrying out the development.

If a Ministerial direction under section 94E 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.

Any Ministerial direction under section 94E of the Act which has been made and is in force from time to time is included in the Attachment to this Plan.

9. How is the proposed cost of carrying out development determined?

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.

10. How is the proposed cost of carrying out development indexed?

Pursuant to clause 25J(4) of the Regulation, the proposed cost of carrying out development is to be indexed to reflect quarterly variations in the *Consumer Price Index All Group Index Number for Sydney* between the date the proposed cost was determined by the Council and the date the levy is required to be paid.

The formula governing indexation of the proposed cost of carrying out development is as follows:

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

where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

CP2 = is the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of payment.

CP1 = is the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition.

11. Cost estimate reports must accompany a development application or application for a complying development certificate

A development application or an application for 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 2;
- 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 3.

12. Who may provide a report for the purposes of clause 11 of this Plan?

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

- where the estimate of the proposed development cost is less than \$500,000 - a person who, in the opinion of the Council, is suitably qualified to provide a cost summary report; alternatively Council will accept the use of published current building cost indices on a square metre basis by recognised organisations.
- where the estimate of the proposed development cost is \$500,000 or more - a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors.

The 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 11.

13. How will the Council apply money obtained from the levy?

Money paid to the Council under a condition authorised by this Plan is to be applied by the Council towards meeting the cost of one or more of the public facilities that will be or have been provided within the area as listed in Schedule 1.

14. Are there priorities for the expenditure of money obtained from levies authorised by this Plan?

Subject to section 93E(2) of the Act and clause 16 of this Plan, the public facilities listed in Schedule 1 are to be provided in accordance with the staging set out in that Schedule

15. Pooling of levies

This Plan authorises money paid in accordance with the conditions of development consents imposed under this Plan to be pooled with money paid in accordance with the conditions of development consents imposed under this Division 6 of Part 4 of the Act (other than under Subdivision 4 of that Division) in respect of development within the Council's area and applied progressively towards the various purposes for which such conditions were imposed.

16. Obligation of certifying authorities

Pursuant to clause 146 of the Regulation, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it is satisfied of compliance with any condition requiring the payment of a levy before work is carried out in accordance with the consent.

The certifying authority must cause the applicant's receipt for payment of the levy to be provided to the Council at the same time as the other documents required to be provided under clause 142(2) of the Regulation.

17. When is the levy payable?

A levy required to be paid by a condition authorised by this Plan must be paid to the Council at the time specified in the condition. If no time is specified, the levy must be paid prior to the first certificate issued in respect of the development under Part 4A of the Act.

18. What is Council's policy on the deferred or periodic payment of levies?

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

19. Are there alternatives to payment of the levy?

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.

Offer made to the Council as part of a development application

If an applicant does not wish to pay a 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 which the levy is to be applied.

The Council will consider the offer as part of its assessment of the development application. If the Council agrees to the arrangement and grants consent to the application, it will substitute a condition of consent under section 80A of the Act requiring the works to be carried out or the material public benefit to be provided for a condition requiring payment of a levy under section 94A. If the 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, the Council will have regard to any relevant requirements of the current Practice Note issued by the NSW Government in the *Revised Development Contributions Manual* (DIPNR 2005) and such other matters as the Council considers relevant in the circumstances of the case.

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 section 96 of the Act.

If the applicant does not wish to pay the levy, the applicant may make an application to the Council under section 96 of the Act to modify the consent by substituting for the condition requiring payment of the levy 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 the Council approves the application, the applicant will be bound by the substituted condition. If the Council does not approve the application, the applicant will remain bound by the condition authorised by this Plan requiring payment of the levy.

Offer to enter into a voluntary planning agreement

If an applicant does not wish to pay a levy or development contributions in connection with the carrying out of development, the applicant may offer to enter into a voluntary planning agreement with the Council under section 93F 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 1.

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 the Council.

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

The 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 the Council agrees to enter into the planning agreement, it may impose a condition of development consent under section 93I(3) of the Act requiring the agreement to be entered into and performed. If the 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. What definitions apply?

In this Plan unless the context or subject matter otherwise indicates or requires:

ABS means the Australian Bureau of Statistics,

Act means the *Environmental Planning and Assessment Act 1979*,

Council means Broken Hill City Council,

Development Contributions means a development contribution required to be paid by a condition of development consent imposed pursuant to section 94 of the Act,

Levy means a levy under section 94A of the Act authorised by this Plan,

Minister means the Minister administering the Act,

Public Facility means a public amenity or public service,

Regulation means the *Environmental Planning and Assessment Regulation 2000*,

Building Cost Indices means indices published by recognised organisations and includes but is not limited to "Rawlinsons", "Cordells" and "Australian Institute of Building Surveyors".

21. Exemptions

A levy authorised by this plan is not applicable in the following circumstances:

- Alterations and Additions to an existing dwelling
- A new dwelling that replaces an existing dwelling that has been demolished within 2 years of making application for a construction certificate

PART 2 EXPECTED TYPES OF DEVELOPMENT IN THE COUNCIL'S AREA AND THE DEMAND FOR PUBLIC FACILITIES TO BE FUNDED BY THE LEVY

LGA Snapshot

The Far West Region covers the very western and northern sections of NSW and is bordered by the states of Queensland and South Australia. The region comprises the Local Government Areas (LGA's) of Broken Hill City and Central Darling Shire, along with the Unincorporated section of NSW.

Broken Hill, located 1,160km west of Sydney, is the regional centre accounting for 86% of the population and the majority of administrative, commercial and community services.

The region was first explored in the 1820s and settled in the 1840s. Broken Hill was founded in 1883 when silver and lead deposits were discovered. The region was quickly identified as having one of the largest and richest deposits in the world. Broken Hill Proprietary Company (BHP) was formed in the area to mine the deposits though ceased work in the region in 1940. Since the 1970s, Broken Hill has experienced a downturn following mine closures, resulting in the population declining to 20,000 persons.

The climate of the Far West Region has played a central role in its historical growth and development, and most importantly, its suitability for certain types of agriculture. Broken Hill records a relatively hotter and drier climate than the rest of Australia. Minimum daily temperatures average as low as 5 degrees Celsius in winter with maximums of over 30 degrees Celsius in summer. On average, the area records 253.3mm of rainfall each year.

In 2006, Broken Hill recorded an estimated population of 20,223 persons.

Between 1991 and 2006, the population of the Far West Region declined on a consistent basis with negative growth recorded in each and every year, due mainly to negative net migration of residents out of the region (see Figure 2.2). However, after periods of large population decreases, the rate of population decline has reduced over the past 7-8 years.

The upsurge in the mining industry and a strong birth rate is expected to result in further stabilisation and potential increases to population over the next 5-10 years.

In terms of official population projections, the ABS and NSW Department of

Infrastructure, Planning and Natural Resources both project the Broken Hill and Central Darling populations will decline at an average rate of approximately 1.2% over the next 10 years, reducing the region's population toward 20,000 persons. This is despite the many projects planned for the region and the likely employment and population impacts.

The Far West Region has experienced a number of major changes in the last 30 years that have impacted the demographic characteristics of the population, including:

- A very significant decline in the population from a peak of 35,000 in the 1970s;
- The indigenous population increased by more than 40% between 1991 and 2001;
- The population is considerably older than it was in 1971;
- Family and household sizes have become smaller;
- There is less full-time employment and more part-time employment;
- Females have a higher labour force participation now than in 1971;
- Traditional industries such as mining and manufacturing employ less people; and
- Individual and household incomes are generally lower than they were in 1971.

Broken Hill's economic performance has traditionally been closely tied to the mining/resources sector. However, the decline of this industry over the past 30 years has increased the focus on other economic sectors, including tourism. In recent times, the region has recorded positive tourism demand relative to state and national benchmarks.

The expected types of development are but not limited to:

- Residential Flat Buildings
- Mixed use development
- Dual Occupancies
- Subdivisions
- Detached dwellings
- Alterations and additions
- Minor structures e.g. pergolas, garages
- Domestic swimming pools
- Commercial development (retail, office, cafes/restaurants)
- Industrial development
- Change of use
- Signage
- Aged housing
- Road transport/roadhouse facility

Council is committed to promoting sustainability across all areas of the community. Council defines this as delivering, social, cultural and environmental systems that operate in harmony for the benefit and wellbeing of all residents. The objective is to enable residents to enjoy a good quality of life in an active and vibrant community. Council's role in the provision of community and recreation facilities and civil infrastructure all contribute to the collective and individual wellbeing. Council aims to provide access and equity to all services and facilities for all members of the community.

The s94A levy will enable Council to provide high quality and diverse public facilities to meet the expectations of the existing and new residents of the Broken Hill City Council area.

The additional public facilities to be provided to meet the expected future development are set out in Schedule 1.

SCHEDULE 1

WORKS SCHEDULE

DESCRIPTION	ESTIMATED COST	PRIORITY Low (L) Medium (M) High (H)
Council animal pound	\$210 000	H
Urban roads	\$120 000	H
Urban footpaths	\$60 000	M
Urban street tree planting	\$30 000	M
Urban stormwater additions	\$60 000	M
Urban area parks and gardens	\$60 000	L
Broken Hill Aquatic Centre	\$180 000	L

Priority Timing

Low Priority up to five years

Medium Priority two to four years

High Priority Zero to three years

Public facilities for which levies will be sought

A. Completed works for which contributions will be recouped

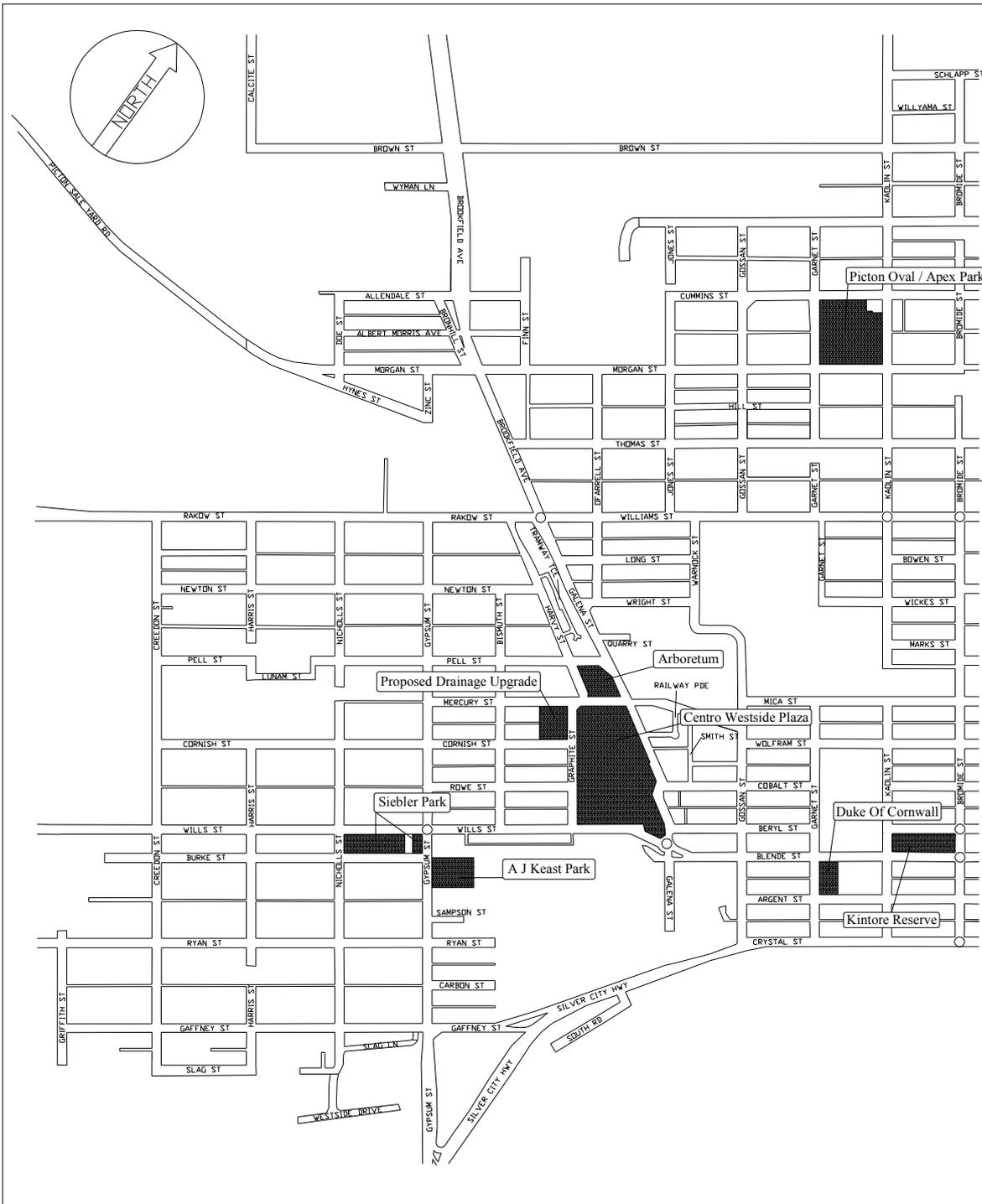
Nil

B. Works in progress for which contributions will continue to be levied

- Broken Hill Aquatic Centre
- Urban parks and gardens
- Urban road network
- Urban street tree planting
- Urban stormwater additions
- Urban footpaths

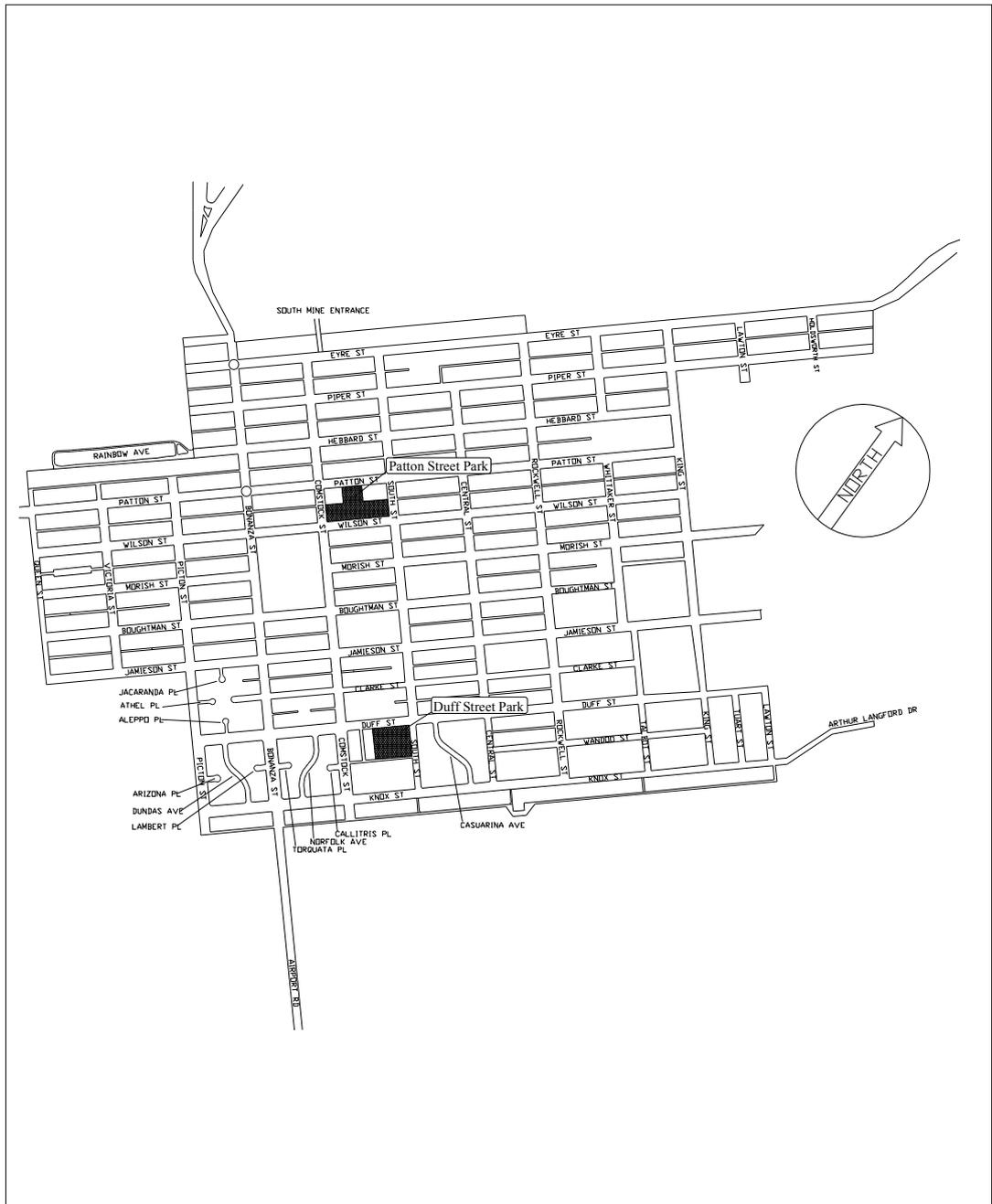
C. New public facilities to be funded through S94A levies

Animal Pound



Section 94A - Area 1
Open Space & Recreation.
Civil Infrastructure.
Community Facilities.

Date: 23/5/2007



Section 94A - Area 3
 Open Space & Recreation.
 Civil Infrastructure.
 Community Facilities.

Date: 23/5/2007

SCHEDULE 2

(CLAUSE 12)

Cost Summary Report*

(Development Cost no greater than \$500,000)

DEVELOPMENT APPLICATION NUMBER:

COMPLYING DEVELOPMENT APPLICATION NUMBER:

CONSTRUCTION CERTIFICATE NUMBER:

DATE:

APPLICANT'S NAME:

APPLICANT'S ADDRESS:

DEVELOPMENT NAME:

DEVELOPMENT ADDRESS:

ANALYSIS OF DEVELOPMENT COSTS:

Demolition and alterations	\$	Hydraulic Services	\$
Structure	\$	Mechanical Services	\$
External walls, 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	\$	Sub-total	\$

Sub-total above carried forward	\$
Preliminaries and margin	\$
Sub-total	\$
Consultant Fees	\$
Other related development costs	\$
Sub-total	\$
Goods and Services Tax	\$
Total Development Costs	\$

I certify that I have:

- Inspected the plans and 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:

*Acknowledgment of City of Sydney for use of the Cost Summary Report

SCHEDULE 3

(CLAUSE 12)

Detailed Cost Report*

Registered* Quantity Surveyor's Detailed Cost Report

(Development cost in excess of \$5000,000)

*A member of the Australian Institute of Quantity Surveyors

DEVELOPMENT APPLICATION NUMBER:

COMPLYING DEVELOPMENT APPLICATION NUMBER:

CONSTRUCTION CERTIFICATE NUMBER:

DATE:

APPLICANT'S NAME:

APPLICANT'S ADDRESS:

DEVELOPMENT NAME:

DEVELOPMENT ADDRESS:

DEVELOPMENT DETAILS:

Gross Floor Area - Commercial		Gross Floor Area – Other	
Gross Floor Area – Residential		Total Gross Floor Area	
Gross Floor Area – Retail		Total Site Area	
Gross Floor Area – Car Parking		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	\$ /m2
% of Construction Cost	%	Car Park	\$
Demolition and Site Preparation	\$	Cost per square metre of site area	\$ /m2
Construction – Commercial	\$	Fit out - Commercial	
Cost per square metre of site area	\$ /m2	Cost per square Metre of commercial area	\$ /m2
Construction – Residential		Fit out – Residential	
Cost per square metre of residential area	\$ /m2	Cost per square metre of residential area	\$ /m2
Construction – Retail		Fit out – retail	
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 for the Australian Institute of Quantity Surveyors.
- Calculated the development cost in accordance with the definition of development costs in the Broken Hill City Council Section94A Levy Contribution Plan.
- 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 Volume1, Appendix A2.

Signed:

Name:

Position and Qualifications:

Date:

- 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 Broken Hill City Council Section 94A Levy Contribution Plan.
- 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: _____

ATTACHMENT

Environmental Planning and Assessment Act 1979

DIRECTION UNDER SECTION 94E

I, the Minister for Planning, under section 94E of the *Environmental Planning and Assessment Act 1979* ("the Act"), direct consent authorities that:

1. The maximum percentage of the levy for development under section 94A of the Act, having a proposed cost within the range specified in the Table to Schedule A, is to be calculated in accordance with that Table.
2. Despite subclause (1), a levy under section 94A of the Act cannot be imposed on development:
 - a. for the purpose of disabled access,
 - b. for the sole purpose of affordable housing,
 - c. for the purpose of reducing the consumption of mains-supplied potable water, or reducing the energy consumption of a building,
 - d. for the sole purpose of the adaptive reuse of an item of environmental heritage, or
 - e. 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.

In this direction words and expressions used have the same meaning as they have in the Act. The term "item" and "environmental heritage" have the same meaning as in the *Heritage Act 1977*.

This direction does not apply to development applications and applications for complying development certificates finally determined before 1 December 2006.

FRANK SARTOR, M.P.,
Minister for Planning,
Sydney.

SCHEDULE A

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