

CONTRIBUTIONS PLAN NO. 16C

OPEN SPACE

KINCUMBER



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1 INTRODUCTION

1.1 History of Contributions Plan Area

Most of the Kincumber Urban Release Area was rezoned to residential under Local Environmental Plan 26 on 4 September 1981. Council adopted a Development Control Plan (DCP) for this area on 9 September 1981. This DCP was in force until the adoption of DCP 16 on 28 December 1992.

On 14 February 1992 the amendments to Section 94 of the Environmental Planning and Assessment Act, 1979 came into force with the proclamation of the Environmental Planning and Assessment (Contributions Plans) Amendment Act, 1991 and its accompanying regulations. This amendment required the preparation of Contributions Plans (CPs) under section 94 for the purpose of imposing conditions on development under Section 94 of the Act.

The Contributions Plan came into effect on 28 December 1992.

Subsequent amendments came into effect on 4 November 1999, 25 February 2004 and 19 April 2006.

1.2 Name of Contributions Plan

This plan is called Contributions Plan No. 16C - Open Space - Kincumber and consists of this document and map marked Kincumber Contributions Plan No. 16C - Open Space.

1.3 Abbreviations within Contributions Plan

"DCP" means Development Control Plan No. 16 - Kincumber the document, prepared under the Environmental Planning and Assessment Act, 1979, as amended.

"DCP Map" means the maps marked Development Control Plan No. 16 - Kincumber, a copy of which may be obtained from Council.

"LEP" means the deemed Environmental Planning Instrument, the Gosford Planning Scheme Ordinance, as amended by subsequent Local Environmental Plans.

"EPA Act" means the Environmental Planning and Assessment Act, 1979, as amended.

"CP" means Contributions Plan No. 16C - Open Space - Kincumber the document, prepared under the EPA Act, as amended.

"CP Map" means the map marked Contributions Plan No. 16C - Open Space - Kincumber, a copy of which may be obtained from Council.

1.4 Land to which Contributions Plan applies

The CP applies to land to which Gosford Planning Scheme Ordinance (as subsequently amended) applies, as outlined by a bold black line on the adopted CP Map.

1.5 Relationship to other Plans/Instruments

The CP is made under, and generally conforms to the provisions of the deemed Environmental Planning Instrument, the Gosford Planning Scheme Ordinance (as amended), which contains the legal planning controls for the development of the area to which the CP applies.

The Contributions Plan is to be read in conjunction with the following documents:

- Development Control Plan No. 16 - Kincumber
- Contributions Plan No. 16A - Drainage - Kincumber
- Contributions Plan No.16B - Roadworks and Traffic Management - Kincumber

This Plan must also be read in conjunction with any other DCP or CP that may apply to the area affected by this plan.

1.6 Purpose of Contributions Plan

The purpose of the CP is to enable the levying of developer contributions for the provision and upgrading of public services and amenities, which will be required as a result of the increased demand generated by development in the CP area.

1.7 Operation of Contributions Plan

This CP has been prepared in accordance with Section 94 of the Environmental Planning and Assessment Act 1979 and Part 4 of the Environmental Planning and Assessment Regulation, 2000.

This CP will come into force on the date of public notification pursuant to Clause 31 of the Environmental Planning and Assessment Regulation, 2000, being 18 April 2012.

1.8 Application of Contributions Plan

When a development application is lodged which relates to land to which this CP applies, Council shall take the provisions of the CP into consideration in determining that application.

Compliance with the CP does not necessarily imply that Council will consent to any application.

1.9 Review Process for Contributions Plan

The CP will be reviewed when considered appropriate having regard to the rate of subsequent development of the area since the last review and the degree of development potential outstanding.

For practical reasons areas are generally considered to be fully developed in respect of their subdivisional potential, when approximately 90% - 95% of the potential residential lots are registered and existing.

1.10 Complying Development and the obligation of Accredited Certifiers

In accordance with section 94EC(1) of the Environmental Planning and Assessment Act 1979, accredited certifiers must impose a condition requiring monetary s94 contributions for any complying development which satisfies the requirements of this contributions plan. The amount of the contribution is to be determined in accordance with the formulae contained within the contributions plan and the current contributions' rate.

The conditions imposed must be consistent with Council's section 94 conditions relating to complying development in accordance with this development contributions plan. It is the professional responsibility of accredited certifiers to keep up to date with any amendments or changes to the plan (including changes to contributions' rate arising from indexation) accurately calculate the contributions and to apply the section 94 condition correctly.

1.11 Construction Certificates and the obligation of Accredited Certifiers

In accordance with section 94EC of the Environmental Planning and Assessment Act and Clause 146 of the Environmental Planning and Assessment Regulation, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent unless it has verified that each condition requiring payment of monetary contributions has been satisfied.

In particular, the certifier must ensure that the applicant provides a receipt(s) confirming that contributions have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the council in accordance with clause 142(2) of the Environmental Planning and Regulation. The only exceptions to the requirement are where works in kind, material public benefit, dedication of land or a deferred payment arrangement has been agreed by the council. In such cases, council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

2 OBJECTIVES

- 2.1 To ensure, that infrastructure and works associated with urban and environmental enhancement are funded under Section 94 of the Environmental Planning and Assessment Act, 1979, as amended.
- 2.2 To identify the additional services and facilities required to satisfy the needs of the future population.
- 2.3 Council to manage the CP implementation and Section 94 funds to ensure provision of services and facilities to meet demand.
- 2.4 To take account of services and facilities already provided in the urban release area whilst planning for future needs.
- 2.5 To provide a basis for determining fair and reasonable developer contributions.
- 2.6 To establish a nexus between anticipated development and contributions sought.
- 2.7 To enable the early provision of services.

- 2.8 To encourage public participation in the formulation of the plan.
- 2.9 To provide the development industry with early advice as to the amount of contributions which will be required for a particular development.
- 2.10 To facilitate proper financial management and accountability for the expenditure of contributions received.
- 2.11 Where a proposed service/facility will provide for population outside the DCP area, to apportion costs accordingly.
- 2.12 To identify approximate locations and estimated costs of services and facilities to be provided.
- 2.13 To outline a proposed schedule/priority list identifying when services/facilities are to be provided in consideration of development rates.

3 CONTRIBUTIONS

3.1 Introduction

The Section 94 contributions were derived using the information and formulae outlined in this document. The contributions per lot were derived from the relevant formulae. Subsequently, all the components of the formulae are considered to be constant in respect of future indexation adjustments except those contributions relating to land acquisition/purchase. Every three months the derived per lot contribution will be indexed.

Council has determined that the total theoretical potential of this DCP area is approximately 1000 lots. Certain existing properties have current development consents which can be acted upon or have development applications before Council which will be subject to existing contributions. The Section 94 contributions on these current development consents are indexed in accordance with the quarterly adjusted Consumer Price Index figures, however, they cannot legally be subject to increased Section 94 contributions resulting from reviews. This forms part of Council's consideration of "reasonableness", when reviewing DCPs/CPs and their needs and subsequent ability to pay for facilities and services based upon past decisions and circumstances.

3.2 Nexus

Section 94 of the Environmental Planning and Assessment Act, 1979 (as amended) grants Councils the power to levy contributions from developers for facilities and services required as a consequence of development.

This power relies upon there being a clear link or nexus between the development being levied and the need for the facility or service for which the levy is being required. This nexus has been determined for the facilities and services proposed in the Works Schedule in this document.

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In terms of the facilities and services proposed to be provided, it has been established that:

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

Additionally, it has generally been accepted that Section 94 contributions may be sought only for services and facilities, which Councils have a responsibility to provide; and that Section 94 contributions can be levied only for capital, not recurrent or operating costs.

The recreational facilities for which Council has determined to levy in the Kincumber CP area are contained in the Works Schedule.

3.3 Apportionment

Where the facilities and or services to be provided (or which have already been provided), will also partially cater for development or population outside the DCP area, Council has apportioned the costs so that the residents/developers of land within the DCP area, will pay only for the portion of the facility/service that is attributable to their needs. The remainder will be funded by other means available to Council. The important consideration is the need for the facility as a result of the scale of the new development.

3.4 Open Space - Background

Contributions for open space will be levied on residential development and relate to the potential population of the development.

Open Space land is provided on the basis of the following standard, which has been in use and accepted throughout Australia and United Kingdom since 1927. This standard has been validated as being reasonable in numerous court appeals:

- 2.83 hectares of open space/public reserve land for every 1000 persons;

This represents 28.3 square metres of open space per person. The amount of open space required to satisfy the general needs of each new lot/dwelling-house is simply calculated by multiplying the standard 28.3 sqm by the density. Traditionally the figure used was 4 persons per dwelling-house which resulted in standard requirement of 113 square metres of public reserve/open space per new lot/dwelling-house. With reference to Census information, and acknowledging that over the life of the development of a DCP area that the densities will vary considerably, Council has derived a density figure of 3.7 persons per dwelling-house, as the density of persons living in each dwelling in developing DCPs.

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Generally, unless the property to be developed contains land which Council has identified is required for the open space needs a contribution in lieu of dedication is required to be paid by the developer of the land. The resulting amount of land dedication is multiplied by the current valuation of englobo (undeveloped urban land) land in the area, to obtain the current contribution. This allows Council to purchase the land required at current market prices. It should be noted that the plan identifies more open space land to be acquired than generated by the urban release area population based upon the standard of 28.3 m² per person. Council is committed to purchasing any excess land using funding sources other than S.94 contributions.

The CP area has sufficient open space land to meet the local requirements, however, to enable it to function as usable areas it is in need of embellishment. As there is no outstanding land for open space to be acquired, it is proposed to use the existing Section 94 contributions and any future contributions to embellish the open space already acquired, thereby maximising its recreational potential.

Assumed Occupancy Rates

DEVELOPMENT	DENSITY (PERSONS)	REQUIRED OPEN SPACE
Single allotment/dwelling house	3.7	105m ²
Medium density housing		
Small dwelling (<70m ²)	1.5	42m ²
Medium dwelling (70-110m ²)	2.5	70m ²
Large dwelling (>110m ²)	3.0	85m ²

3.5 Timing of payment of contributions

Contributions levied under this plan will be payable as follows:

- (a) development applications involving subdivision - payment prior to the release of the subdivision certificate by Council;
- (b) development applications involving building - payment prior to the release of the construction certificate; or
- (c) development applications not accounted for in (a) or (b) above - payment prior to the release of development consent;
- (d) Complying Development Certificates prior to the release of the complying development certificate.

3.6 Medium Density Residential Development

Special conditions will apply to any development consent granted for medium density residential development. Medium density residential development includes units, villas, dual occupancies, townhouses, residential flat buildings, apartments, secondary dwellings and the like.

In respect of Section 94 development contributions and this CP, reference should be made to the Table "Assumed Occupancy Rates" in clause 3.4. The open space contribution that will be applied to each medium density dwelling is calculated by multiplying the "required open space" area by current open space value per square metre, for example:

Open Space Contribution:

Small dwelling = 42m² open space

Therefore: 42 x \$ value/m² = \$/small dwelling

4 FORMULA

The funds required for the recreation facilities proposed are sought under the proposed contribution rates, which came into effect from 28 December 1992, as indexed to today's values.

The formulae adopted to determine contributions per lot for the required facilities are as follows:

* Open Space Land $A \times V = \$ \text{ per lot}$

Where,

A = Area of open space land required to satisfy need of higher density of development proposed, ie 2.83 ha/1000 persons, which represents 28.3m²/person, using an occupancy rate for occupied dwellings of 3.7 persons/dwelling, therefore, 28.3 x 3.7 = 105m²/lot.

V = The current Council valuation estimate of open space land, appropriate to the land to be acquired, in dollars per square metre.

The contribution per lot is adjusted quarterly by multiplying it by I/12 indexation figures.

Contributions will be required as a condition of consent at the initial stage of development.

Credit is given for existing lots except in relation to where the development is for a secondary dwelling.

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APPENDICES

I WORKS SCHEDULE - CURRENT FROM 30/11/03

Works to be Constructed	Estimated Cost
Landscaping, Kincumber Library, Bungoona Road	\$ 164,450
Foreshore Embellishment, Carrak Road	\$ 300,000
Playground, Tuross Close	\$ 90,000
Playground, Mathew Street	\$ 90,000
Playground, Seabreeze Avenue	\$ 90,000
	<u>\$ 74,250</u>
	\$718,700

II INDEXATION FIGURES

- I1 = Current quarter "Consumer Price Index (All Groups Index) for Sydney" issued by the Australian Statistician.
- I2 = Original quarter "Consumer Price Index (All Groups Index) for Sydney" issued by the Australian Statistician = 107.4 (December 1992)

III LAND VALUATION - CURRENT FROM 17/12/91

Contribution	Englobo \$/m²	Developed \$/m²
Open Space	25	140

IV CONTRIBUTION RATE

	Original Rate \$/lot	Current Rate \$/lot
Open Space/land (Account No. D9016.826)	2625	2625

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V ACCOUNTS

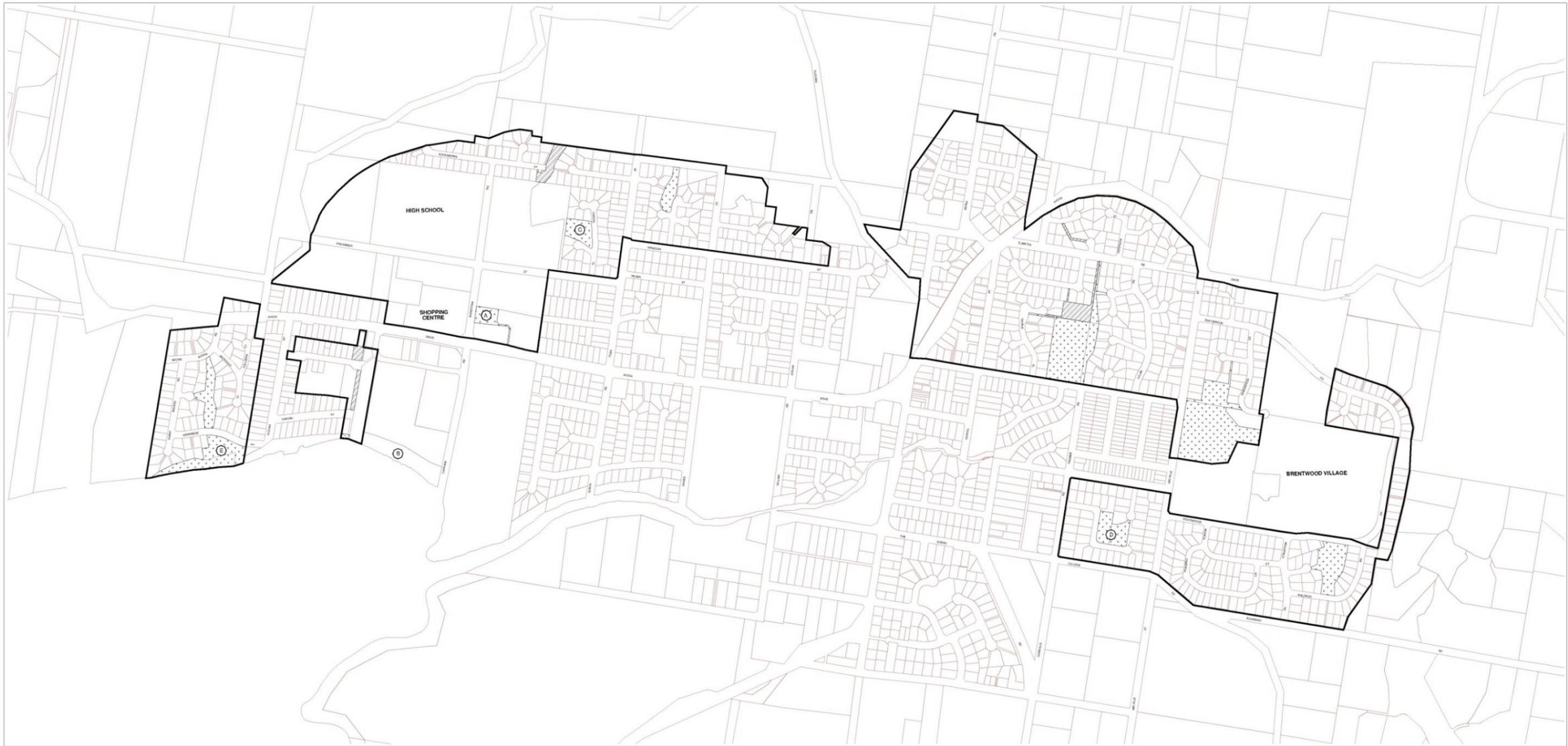
A Register is kept by Council, which outlines the following information:

- funds received from the date of the CP coming into effect in accordance with the Environmental Planning and Assessment Regulation, 2000;
- funds levied under this plan will be accounted for separately (that is, funds levied under this plan shall have a separate account);
- the source of all funds received from the date of the plan coming into effect shall be separately identified (that is, identifying which specific development paid which specific contribution);
- expenditure of all funds received, identifying works on which the funds were spent, and timing of expenditure; and
- full details of disbursement to other accounts which have previously paid for the cost of studies.

These records are kept in accordance with the Environmental Planning and Assessment Regulation, 2000 as amended. These records are available for public perusal at the ground floor counter.

In accordance with the Regulations, an annual statement will be prepared and be available for public perusal, along with the register of accounts.

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WORKS SCHEDULE - KINCUMBER	
OPEN SPACE	
ITEM	
A LANDSCAPE KINCUMBER LIBRARY BUNGOONA RD	\$164,450
B FORESHORE EMBELLISHMENT CARRAK RD	\$300,000
C PLAYGROUND TUROSS CL	\$ 90,000
D PLAYGROUND MATHEW ST	\$ 90,000
E PLAYGROUND SEABREEZE AVE	\$ 74,250
TOTAL \$718,700	

LEGEND

	EXISTING DRAINAGE RESERVE		D.C.P. BOUNDARY
	EXISTING PUBLIC RESERVE		RECREATION EMBELLISHMENT
	PROPOSED DRAINAGE RESERVE		

COMPLETED WORKS - KINCUMBER

RECREATION & OPEN SPACE

* DENOTES UNDER ACQUISITION / CONSTRUCTION / DESIGN
** DENOTES EXPENDITURE PRIOR TO DECEMBER 1992

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REVISION DETAILS	DATE

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COUNCIL FILE No.: 377.25.04
THIS PLAN COMES INTO EFFECT FROM 18/2/04 TO THE EXTENT TO WHICH IT IS CONSISTENT WITH ALL OTHER LOCAL ENVIRONMENTAL PLANS.

CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AND REGULATIONS, AS AMENDED.
FOR COUNCIL: _____ DATE: _____



SHEET 1 OF 1
SCALE 1:5000



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