

Report of Planning and Economy to the Ordinary Meeting of Council held on Monday 21 November 2016

PE4 - Exhibition of Draft Wollondilly Developer Contributions Plan 2017

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TRIM 8373

EXECUTIVE SUMMARY

- This report seeks a resolution from the Council to exhibit a Draft Developer Contributions Plan.
- The new Plan covers the period from 2017 to 2026, and focusses on developing a new Works Schedule that includes an updated list of local infrastructure to support the predicted population increase in Wollondilly to 2026. New Section 94 rates have also been calculated.
- It is recommended:
 - That Council endorse the exhibition of the Draft Developer Contributions Plan 2016 (including both the Section 94 and Section 94A Plan) as shown at Attachment 1 for a period of at least 28 days.
 - That Council write to the Minister for Planning outlining its concerns that the Government has not indexed the cap on developer contributions.
 - That a further report on the Draft Developer Contributions Plan following the completion of the public exhibition period and receipt of legal advice confirming its legality be considered.

REPORT

At its Ordinary Meeting held on 18 July 2016, Council resolved to undertake a review of its Developer Contributions Plan. This was in response to a recommendation arising from an audit of Council's contribution system carried out in 2015. This audit found (inter alia) that as the current Section 94 Plan was adopted in 2011, and included a Works Schedule that had not been amended significantly since 2005, that it may not be current in relation to its identification of infrastructure requirements to support the population growth of Wollondilly. Furthermore, the Plan may not be securing sufficient revenue to fund the required infrastructure, albeit that a cap to many contributions.

However, in spite of the Audit recommendation it was not considered feasible to undertake a comprehensive review of the Plan at this time, due to uncertainty around some of the State Government led strategic planning work that is currently being undertaken. At the time the report to Council's July meeting was written Wilton was still not definite. Since then Wilton has been declared as a priority growth area and detailed planning for this area is presently in progress. Other current work includes:

- The South Western District Plan
- The investigations by the Department of Planning and Environment into the Greater Macarthur Priority Growth Area

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- Uncertainty regarding Council's Draft Growth Management Strategy (GMS). The Draft GMS identifies the development potential in the towns and villages within Wollondilly, and is presently with the Department of Planning waiting endorsement for exhibition. Until it is adopted, the amount of future growth within the LGA, and the infrastructure required to support it is unclear.

These studies will have significant implications for the provision of local infrastructure and until there is further certainty around their outcomes, it would be premature to undertake a complete review of the Section 94 Plan. However based on the number of planning proposals under consideration by Council, it is clear that some growth will inevitably occur in Wollondilly and as several years have elapsed since the current Plan commenced, it is appropriate that a review be undertaken as a means of minimising the risks identified by the Audit.

As a result Council made the following resolutions at its meeting on 18 July 2016 regarding the review of the Section 94 Plan:

1. *That Council endorse a limited review of Council's Developer Contributions Plan, focussing on the Works Schedule and other changes as identified in the report*
2. *That preparation of the 2017/2018 Operational Plan detail a funding bid to undertake a more detailed review of Council's Developer Contributions Plan, following preparation of the South Western District Plan, finalisation of the Greater Macarthur Land Use and Infrastructure Strategy and adoption of Council's Growth management Strategy*

This report outlines the actions that have been taken in response to these resolutions.

THE REVISED DEVELOPER CONTRIBUTIONS PLAN

A Draft Contributions Plan has been prepared in line with the above Council resolution. It is included as Attachment 2 to this report and it is recommended that Council endorse this Plan for exhibition.

Council's attention is drawn to the structure of the Draft Plan. The new Plan has been structured differently to the current Plan in that it is now divided into two discrete sections:

- A Section 94 Plan that applies to residential development and which is included in Part A
- A Section 94A plan that applies to non-residential development and which is included in Part B.

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Under the current Plan the Section 94 and Section 94A clauses were combined which sometimes caused confusion particularly to a layperson trying to understand the Plan. The restructuring of the Plan into discrete sections that apply specifically to residential and non-residential development should help minimise the risk of any further confusion in understanding and applying the Plan. The most significant changes have been made to the Section 94 Plan, and the most significant of the changes are outlined below:

KEY FEATURES OF THE REVISED SECTION 94 PLAN

1. Key Principles and Assumptions

A key requirement of a Section 94 Contributions Plan is that the funds can only be used to fund the infrastructure and services required by new development. To provide a basis for estimating future infrastructure requirements, assumptions have been made about the future population growth of Wollondilly. The figures were derived from a review of the population data included in the current Plan and supplemented by considering the potential growth associated with the planning proposals under consideration (or recently approved) by Council. Based on this review, a total population of 71,887 is predicted in Wollondilly by the end of this Plan's life (2026). This represents an increase of 23,887 people over the population at 2015 which was 48,000. It may be the case that growth in Wollondilly will be higher as an outcome of the State led strategic planning work being undertaken. The findings of this work cannot be included in the Plan at this time, but they will be included in the more comprehensive review of the Plan, proposed to occur in 2017-2018. The population estimates do assume there will be growth at Wilton

2. Legislative Requirements

The revised Plan has been prepared in accordance with relevant legislation, and with Guidelines issued by the Department of Planning and Environment. The key requirements in preparing Section 94 Plans are that the contribution rates are reasonable and that they are based on considerations of nexus and apportionment,

In the case of nexus, this has been addressed in the new Plan by adopting the same precinct based approach to the collection and spending of contributions that is used in the current Plan, and which ensures that (other than infrastructure with Shire wide benefits) that the infrastructure that is to be serve a particular precinct is paid for only by the (future) residents of that precinct. Apportionment considerations have been addressed by ensuring that the incoming population pays for the entire amount of new infrastructure required as a consequence of that new population, though they would pay only a proportion of the cost of upgrading existing infrastructure or for major new infrastructure that would be used by the existing population as well.

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Also relevant to calculating the new Section 94 rates is a Ministerial Direction issued in 2009 which limits Section 94 contributions in Wollondilly (and other non-release area Councils) to \$20,000 per lot (other than in the Wilton Growth Precinct which has a \$30,000 cap). In some cases, as a result of quarterly indexation of the Section 94 rates to account for the cpi the \$20,000 cap will be exceeded, and where this occurs, the rates need to be adjusted to bring them back below the \$20,000 cap. This is done by a proportional adjustment to the amount for each of the Works Categories to reduce the total amount payable to below \$20,000.

As has been reported to Council previously, the \$20,000 cap impacts significantly on Council's ability to generate the revenues required to fund the infrastructure identified under the Plan, particularly as there is no ability to index the \$20,000 cap. This occurs because the cost of providing the infrastructure items included in the Works Schedule will increase with inflation, yet as a result of the cap, the funds that Council collects will not keep pace with the actual cost, and this will impact on Council's ability to fund the works. Council has previously made submissions seeking a change to the Minister's Direction to allow the \$20,000 cap to be indexed but so far these have not been successful. It would however be appropriate to write again to the Minister for Planning regarding this matter and this has been included as a recommendation of this report.

3. Proposed Works Program

Revised Works Schedules that identify projects to be funded through the Plan have been prepared in consultation with relevant Council staff. The Draft Plan proposes a 10 year works program to a total value of \$197.21 million, of which \$95.10 million (or approx 48%) will be funded through Section 94 contributions. This compares to a program of \$162.4 million under the 2011 Plan, of which \$137.3 (or about 85%) is Section 94 funded. This is mainly a result of two factors:

- The inclusion in the Works Program of a major item in the Traffic and Transport category (Silverdale Rd upgrades). This is valued at \$50 million, but only \$5 million has been apportioned to Section 94 contributions, with the balance intended to be made up in grant funding;
- The acquisition program for open space has been reduced. This had a value of about \$65 million in the 2011 Plan and was mostly apportioned to new development (i.e. Section 94 funding), and which inflated the proportion of the Section 94 contribution in relation to the total works program. The amount allocated to the acquisition of open space in this Plan has been significantly reduced to about \$19.5 million, so the proportion of Section 94 funding in relation to the total value of the Works Program has also been reduced. The new plan is based on information contained in the 2014 Open Space, Recreation and Community Facility Strategy that was not available to the previous plan.

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The value of the program for each category of projects in the works schedule, compared against the funding for that category included in the current Section 94Plan is shown in the Table below:

Category	Current (2011) plan	Proposed (2016) Plan
Library & Community	\$32.11 million	\$47.74 million
Traffic & Transport	\$34.3 million	\$83.86 million
Sporting Facilities	\$23.37 million	\$31.14 million
Recreation Facilities	\$71.50 million	\$34.47 million
Bushfire management	\$1.1 million	Nil
TOTALS	\$162.38	\$197.21 million

Copies of the Works Schedules are included as Attachment 1 to this report.

4. Carryover of Unspent funds

At 30 June 2016, Councils Section 94 budget had an accumulated reserve of approximately \$9.8 million. These funds are to be carried over to the new Plan to help fund the works that have been identified in the new Works Schedule. In all cases the funds have been transferred on a "Like for Like basis" meaning for example that accumulated funds in the roadworks category in a particular precinct have been transferred to fund roadworks in the same precinct. The amounts carried over to each category are included in the Works Schedules.

5. Revised Section 94 rates

As a result of the revisions to the Works Schedule, new contribution rates have been calculated to ensure that an appropriate income stream is collected from Section 94 funds to fund the new Works Schedule.

The table below provides a summary of the Section 94 rates for a dwelling house that are proposed under the current Section 94 Plan and compares them against the rates included in the current plan and indexed to the June 2016.

Precinct	Rate under Proposed Plan	Rate under current Plan
1	\$18,216	\$21,509
2	\$22,773	\$12,116
3	\$22,571	\$25,645
4	\$13,148	\$20,604

(Note: As explained earlier, all rates under the proposed and current plans are capped at \$20,000 per lot).

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The table above shows that the rates under the new and existing plans are reasonably comparable for Precincts One and Three, but are quite different for Precincts Two and Four, as explained below:

- For Precinct 2, which includes localities such as The Oaks, Cawdor, Theresa Park and similar locations towards the north of the Shire, the per lot contribution for a dwelling house has increased from \$12,116 to \$22,773. The main reason for this is the inclusion in the works schedule of the projects for the acquisition of additional open space. The Open Space, Recreation and Community Facilities study (Clouston 2014) has found that the provision of open space in Precinct 2 is the lowest in the Shire, and below the benchmark standard of 2.83 hectares per thousand people. To ensure that the level of open space provision does not deteriorate further, particularly with the predicted population increase in this precinct of 1,976 people, the acquisition of an additional 5.6 hectares has been included, and which largely explains the increased Section 94 contribution for this precinct.
- The contribution for Precinct 4 has decreased from \$20,604 per lot to \$13,148 per lot due mainly to the fact that the centres of Wilton and Appin are located here, and these are the subject of much of the State Government led strategic planning work referred to earlier. As a result it is considered premature to include significant new local infrastructure for these areas in the revised Plan. The need for additional local infrastructure in this precinct (and in all other precincts) will be given more attention when the detailed review occurs in 2017-2018.

KEY FEATURES OF THE SECTION 94A PLAN

Section 94A plans are much simpler than Section 94 plans because there is no need to comply with the requirements of nexus and apportionment. Section 94A Plans simply require a 1% levy on non-residential developments with a capital cost exceeding \$200,000. Developments with a capital cost between \$100,000 and \$200,000 pay a 0.5% levy.

The clauses included in the previous plan have largely been retained and updated with a view to keeping the Plan as simple and as accurate as possible.

The most significant change is updating the Works Schedule to delete any projects no longer required. At this stage no additional projects have been identified for funding under the Section 94A Plan.

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Otherwise, a new exemption is proposed to be introduced which exempts developments rebuilding after a natural disaster from having to repay the Section 94A levy - that is, the 1% levy on non-residential types of development. This is considered to be a reasonable ground for exemption and would demonstrate Council support for businesses recovering from a natural disaster, such as the recent flooding in Picton, or in the event of other disasters such as bushfire. In these cases development usually replaces what was there rather than creating additional demand for services, e.g. roads. In these cases development usually replaces what was there rather than creating additional demand for services, e.g. roads. Other exemptions are allowed by way of specific Directions from the Minister for Planning.

CONSULTATION

Consultation has occurred with relevant sections of Council responsible for planning and delivering the infrastructure categories included in the Draft Plan. The Draft Works Schedules and contribution rates were also submitted to Council's Executive prior to this meeting.

One of the recommendations of the report is that Council endorse the exhibition of the Draft Plan. It is proposed to exhibit it for at least 28 days in accordance with the requirements of the Act. The proposed exhibition of the draft Plan will provide an opportunity for public input into the infrastructure proposed to be funded under the Plan and the appropriateness of the rates to be charged. If exhibition commences prior to Christmas, the exhibition period will be lengthened.

Legal advice on the draft plan will also be obtained during the public exhibition period.

FURTHER ACTION

As has been noted previously, a more detailed review of the Plan needs to be undertaken once the outcome of the State led strategic planning work has been completed and the future population growth in Wollondilly, and the associated local infrastructure requirements can be re-assessed.

FINANCIAL IMPLICATIONS

The proposed works schedule is intended to be implemented over the life of the Plan from 2017 until 2026. The adoption of this Plan, when finalised will have positive financial implications for Council as it will provide a source of funding to help fund the development of new infrastructure for the period 2017-2026, and which will help to inform the preparation of other strategic planning documents by Council, such as its Operational Plan and Delivery Plan. However the amount of revenue actually collected from Section 94 contributions to fund the works program is tied to the amount of growth that actually occurs.

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The actual delivery of the works in the works schedule must also be weighed against other Council priorities. For works that are not 100% funded through Section 94 funding, other funding sources must be obtained, and these could include grant funding, or alternatively, the works may be delivered by developers through Works in Kind Agreements or Voluntary Planning Agreements. For other works that are considered a priority, Council would be required to commit its own funds to complete those works that are not 100% Section 94 funded or where other funding sources are not available. This will need to be considered and revisions made to the budget where appropriate.

In terms of preparation of the 2017/2018 Operational Plan, a funding bid will be requested to undertake a more detailed review of Councils Developer Contributions Plan, following preparation of the South Western District Plan, finalisation of the Greater Macarthur Land Use and Infrastructure Strategy and adoption of Council's Growth management Strategy.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Draft Work Schedules included in Contributions Plan 2017.
2. Draft Contributions Plan 2017.

RECOMMENDATION

1. That Council endorse the exhibition of the Draft Developer Contributions Plan 2016 (including both the Section 94 and Section 94A Plan) as shown at Attachment 1 for a period of at least 28 days.
2. That Council write to the Minister for Planning outlining its concerns that the Government has not indexed the cap on developer contributions.
3. That a further report on the Draft Developer Contributions Plan following the completion of the public exhibition period and receipt of legal advice confirming its legality be considered.