

Development Contributions – Practice Note

Template for a section 94A development contributions plan

The following provides a template for a section 94A levy development contributions plan. It is recommended that councils follow the format closely as there is considerable benefit in having consistency across local government areas.

The aim is to ensure that future plans, when properly prepared, conform to the requirements of the Environmental Planning and Assessment (EP&A) Regulation.

The template is structured as shown in the table below. This table also shows how each section addresses the mandatory requirements of the EP&A Regulation. The concepts in the table are discussed in more detail in the template.

Within the template format, notes are provided in boxes to clarify the concepts within the individual clauses or sections. These are for reference only and do not form part of the template proper.

Recommended section of plan	What it should contain	Section of EP&A Regulation it addresses
PART A: Summary schedules	Summary schedules should be provided to show levy rates applicable to various types of development and for the various categories of levies being sought. This should also indicate costs and timing of facility provision.	Clause 27(1)(f)(i)
PART B: Expected development and demand for public facilities	There is a requirement to comply with clause 27(1)(c) to identify the relationship between the expected types of development in the area and the demand for additional public amenities and services to meet that development. This should be in summary form only.	Clause 27(1)(c)
PART C: Administration	This part establishes the statutory framework of the plan. It should cover: <ul style="list-style-type: none"> • The purpose of the plan • Area the plan applies • Adjustment of the levy • Council's position on deferred or periodic payments • A map showing the location of public amenities and services proposed to be provided. 	Clause 27(1)(a), (b), (f), (g), (h)
PART D: References	This part should provide the cost report forms as well as the glossary of terms, and any additional relevant information.	Clause 25J

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**Section 94A development contributions plan for the council of
[insert name of council]**

Part A – Summary schedules

The following summary schedules are included in this plan:

- Works program
- Completed works
- Summary of levy by category.

The works schedule identifies the public facilities for which section 94A levies will be required. Schedule 1 identifies the works schedule adopted in **[year to be inserted]** and a summary of the expenditure on the respective items.

Levies paid to council will be applied towards meeting the cost of provision or augmentation of new public facilities. Schedule 1 provides a summary of new public facilities, which will be provided by council over the next 5 years, as well as the estimated cost of provision and timing.

The EP&A Regulation [clause 27(1)(f)(i)] requires a section 94A plan to identify the percentage of the levy and, if the percentage differs for different types of development, the percentage of the levy that applies to each. It is important that this is set out in words and it is useful to have a summary table at the front of the plan.

The following provides an example. Notes to the table can be used to explain how the levy will apply to different types of development. In the case of a joint section 94A plan, each council area should be specifically identified as well as the rates adopted for each area.

The inclusion of a works schedule is a requirement of the EP&A Regulation. This schedule must show:

- the works proposed to be funded
- the costs of the facilities identified in the program
- their staging (by reference to dates or thresholds)
- if the funds are to be pooled, the priorities for expenditure.

Schedule 1: New public facilities for which levies will be sought

Public Facilities	Estimated Costs	Estimated Time Frame

The summary tables should be simple and uncomplicated. They should set out the facilities by name (rather than generic facility types such as 'open space') and the timeframe for provision should be the best estimate made at the time of adoption or review of the plan.

Schedule 2: Summary schedule for section 94A contributions plan

Type of Development	Levy (%)
Residential development	[insert levy as appropriate]%
Residential flat development	[insert levy as appropriate]%
Commercial and retail development	[insert levy as appropriate]%
Industrial development	[insert levy as appropriate]%
Other forms of development	[insert levy as appropriate]%

NOTE: These schedules are examples only

This should clearly set out the rates of the levy for various types of development. The Minister for Planning issued a section 94E direction on 10 November 2006 exempting the development, which is discussed below in part 1.5. In addition, the direction also requires councils to apply the levy as follows:

- Development where the proposed cost of carrying out the development is less than \$100,000 – no levy can imposed; and
- Development where the proposed cost of carrying out the development is \$100,001 or more but less than \$200,000 – a maximum levy of 0.5% can be imposed.

These restrictions should be reflected in the schedules used in councils' s94A contributions plan.

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Part B – Expected development and demand for public facilities

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

- **[insert here the rationale for imposition of the levy, eg:]**
 - **the population projections undertaken by [name source such as ABS, council etc] indicate the likely growth of [insert amount]**
 - **the likely population growth will require the provision of additional public facilities**
 - **the likely population growth will diminish the existing populations enjoyment and standards of public facilities.**

There is still a requirement to identify the relationship between the expected development and demand for public facilities. A summary statement should be included in the plan to this effect.

Part C – Administration and operation of the plan

1.1 What is the name of this development contributions plan?

This development contributions plan is called the **[insert the name of the plan – either a geographic reference to the local government area or specified part of the local government area(s) to which the plan applies]** Development Contributions Plan 200? **[Year: eg 2006]**.

The name of the plan is important especially if it will apply to a specific part of a local government area (or areas in the case of a joint section 94A plan). If this plan is a review of an existing plan, add the advisory note (ie 'this plan amends ...').

1.2 Application of this plan

Alternative 1: entire LGA (or LGAs)

This plan applies to all land within the local government area(s) of **[insert name or names in the case of joint plans]** as shown on the Map **[or maps as relevant]**.

Is extremely important to delineate the area to which the plan applies to avoid confusion and potential challenges. It is also important to indicate if the plan applies to the entire local government area or a specific area. Maps and plans should be included.

Alternative 2: portion of a LGA or LGAs

This plan applies to land within the local government area(s) of **[insert name or names in the case of joint plans]** as shown on the Map **[or maps as relevant]**.

The EP&A Regulation [clause 27(1)(f)(i)] requires a section 94A plan to identify the percentage of the levy and, if the percentage differs for different types of development, the percentage of the levy that applies to each.

This development contributions 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 below:

(Insert here the development types)

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1.3 When does this development contributions plan commence?

This contributions plan commences on [insert date].

1.4 What is the purpose of this contributions plan?

The primary purposes of this contributions plan are:

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

The purpose of the plan sets out the principles underlying the plan and the manner in which council is to seek contributions. They should be as simple and succinct as shown in the example below. When applied to more than one local government area, it will be important to ensure that the purposes are sufficiently worded to cover each council's intentions.

If, for example, a council has a specific objective of using the levy to fund certain facilities (such as community and recreation facilities, civic improvement or affordable housing), it may wish to detail these in this section.

1.5 Are there any exemptions to the levy?

The levy will not be imposed in respect of development:

- where the proposed cost of carrying out the development is \$100,000 or less;
- for the purpose of disabled access; or
- for the sole purpose of providing affordable housing; or
- for the purpose of reducing a building's use of potable water (where supplied from water mains) or energy; or
- for the sole purpose of the adaptive reuse of an item of environmental heritage; or
- that has been the subject of a condition under section 94 under a previous development consent relating to the subdivision of the land on which the development is to be carried out.

On 10 November 2006, the Minister for Planning issued a direction under section 94E exempting the development set out here. In addition to the exemptions, the Minister's section 94E direction limits council's use of the maximum rate contained in clause 25K of the EP&A Act Regulation (refer to the section 94A development contributions plans practice note).

Other exemptions are at the discretion of council. Considerations regarding exemptions are covered in detail in the practice note on Exemptions, discounts, credits and refunds.

The example given here is to exclude extensions to family homes, but capture development that increases floorspace.

Council may consider exempting other development, or components of developments from the section 94A levy that include:

- **[INSERT ANY PARTICULAR TYPES OF DEVELOPMENT FOR WHICH EXEMPTION IS TO BE GRANTED - EG]**

Example

Council may consider exempting developments, or components of developments from the section 94A plan that include:

- *an application which is solely for the purpose of alterations and additions to an existing single dwelling shall be exempt from payment of a contribution under this plan*
- *(others as council wishes).*

Notwithstanding the above provisions, this exemption does not apply to a development adding additional rooms or reconfiguring the internal design of any dwelling or group of dwellings that have not yet been issued with an occupation certificate or been lived in.

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1.6 Pooling of levies

This plan expressly authorises section 94A levies paid for different purposes to be pooled and applied (progressively or otherwise) for those purposes. The priorities for the expenditure of the levies are shown in the works schedule.

1.7 Construction certificates and the obligation of accredited certifiers

In accordance with clause 146 of the EP&A Regulation 2000, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent 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 the council in accordance with clause 142(2) of the of the EP&A Regulation . Failure to follow this procedure may render such a certificate invalid.

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

1.8 How will the levy be calculated?

The levy will be determined on the basis of the rate as set out in summary schedule. The levy will be calculated as follows:

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

Where

%C is the levy rate applicable

\$C is the proposed cost of carrying out the development

The proposed cost of carrying out the development will be determined in accordance with clause 25J of the EP&A Regulation. The procedures set out in Schedule 1 to this plan must be followed to enable the council to determine the amount of the levy to be paid.

The value of the works must be provided by the applicant at the time of the request and must be independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications.

Without limitation to the above, council may review the valuation of works and may seek the services of an independent person to verify the costs. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant and no construction certificate will be issued until such time that the levy has been paid.

Section 94E(2) of the EP&A Act permits the pooling of section 94A levies and, should council wish to pool their contributions, a specific clause to permit this should be included in the plan. If the plan allows section 94A levies to be pooled for different purposes and applied progressively, clause 27(1)(i) of the EP&A Regulation requires the plan to identify the priorities of the expenditure of the levies with particular reference to the works schedule.

This clause is suggested to ensure that certifiers are made aware of their responsibilities in relation to the payment of the levy.

The EP&A Regulation is quite specific about what is and is not included in the calculation of the cost of a development. The following reflects the wording of the Regulation.

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1.9 When is the levy payable?

A levy must be paid to the council at the time specified in the condition that imposes the levy. If no such time is specified, the levy must be paid prior to the issue of a construction certificate or complying development certificate.

The EP&A Regulation [clause 27(g)] requires a council to specify the conditions under which it may accept a deferred or periodic payment of the levy.

1.10 How will the levy be adjusted?

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:

The EP&A Regulation [clause 25J(4)] allows the adjustment of a contribution between the date the consent is issued and the time of payment (which may vary substantially).

$$\text{Contribution at time of payment} = \$C_o + A$$

Where

\$ C_o is the original contribution as set out in the consent

A is the adjustment amount which is =

$$\frac{\$C_o \times ([\text{Current Index} - \text{Base Index}])}{[\text{Base Index}]}$$

Where

Current Index [index name to be inserted] is the **[index name to be selected by the council]** as published by the **[insert source of index]** available at the time of review of the contribution rate;

Base Index [index name to be inserted] is the **[index name to be selected by the council]** as published by the **[insert source of index]** at the date of adoption of this plan which is **[insert index number at time of adoption]**

Note: In the event that the Current **[index to be inserted]** is less than the previous **[index to be inserted]**, the Current **[index to be inserted]** shall be taken as not less than the previous **[index to be inserted]**

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1.11 Can deferred or periodic payments be made?

Deferred or periodic payments may be permitted in the following circumstances:

- deferred or periodic payment of the contribution will not prejudice the timing or the manner of the provision of public facilities included in the works program,
- in other circumstances considered reasonable by council.

If council does decide to accept deferred or periodic payment, council may require the applicant to provide a bank guarantee by a bank for the full amount of the contribution or the outstanding balance on condition that:

- the bank guarantee be by a bank for the amount of the total contribution, or the amount of the outstanding contribution, plus an amount equal to thirteen (13) months interest plus any charges associated with establishing or operating the bank security
- the bank unconditionally pays the guaranteed sum to the council if the council so demands in writing not earlier than 12 months from the provision of the guarantee or completion of the work
- the bank must pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development
- the bank's obligations are discharged when payment to the council is made in accordance with this guarantee or when council notifies the bank in writing that the guarantee is no longer required
- where a bank guarantee has been deposited with council, the guarantee shall not be cancelled until such time as the original contribution and accrued interest are paid.

The EP&A Regulation [clause 27(g)] requires a council to specify the conditions under which it may accept a deferred or periodic payment of the contribution. Councils may seek bank guarantees for contributions if deferred payments are contemplated.

Councils may wish to consider circumstances where, for example, staged development is being proposed and payment of the total contribution up front may be onerous or unnecessary in the circumstances.

This is a typical clause found in contributions plans and is intended to allow councils to seek bank guarantees for the amount of the contribution (this may be the entire contribution or that part relating to the individual stage). The clause provides for councils to draw down the contribution within 12 months if necessary. Councils are encouraged to maintain dialogue with applicants particularly where the guarantee is large.

Many developers are accustomed to providing bank guarantees or bonds, however councils should consider a type of security which is appropriate to the circumstances of the particular development.

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Part C - References

Dictionary

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

[INSERT HERE DEFINITIONS AS REQUIRED]

APPENDIX A

Procedure

A cost summary report is required to be submitted to allow council to determine the contribution that will be required. The following should be provided:

- A cost summary report must be completed for works with a value no greater than \$ [INSERT AMOUNT HERE]
- A Quantity Surveyor's Detailed Cost Report must be completed by a registered Quantity Surveyor for works with a value greater than \$ [INSERT AMOUNT HERE]

To avoid doubt, section 25J of the *Environmental Planning and Assessment Act 1979* sets out the things that are included in the estimation of the construction costs 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.

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Sample Cost Summary Report

Cost Summary Report

[Development Cost no greater than \$ [INSERT FIGURE HERE]]

DEVELOPMENT APPLICATION No. REFERENCE:

COMPLYING DEVELOPMENT CERTIFICATE APPLICATION No.

CONSTRUCTION CERTIFICATE No. 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 COST	\$

I certify that I have:

- inspected the plans the subject of the application for development consent or construction certificate.
- calculated the development costs in accordance with the definition of development costs in clause 25J of the Environmental Planning and Assessment Regulation 2000 at current prices.
- included GST in the calculation of development cost.

Signed: _____

Name: _____

Position and Qualifications: _____

Date: _____

(Acknowledgment to City of Sydney for use of the model cost reports)

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Sample Quantity Surveyors Report

Registered* Quantity Surveyor's Detailed Cost Report

[Development Cost in excess of \$ [INSERT FIGURE HERE]]

*A member of the Australian Institute of Quantity Surveyors

DEVELOPMENT APPLICATION No. REFERENCE:

COMPLYING DEVELOPMENT CERTIFICATE APPLICATION No.

CONSTRUCTION CERTIFICATE No. DATE:

APPLICANT'S NAME:

APPLICANT'S ADDRESS:

DEVELOPMENT NAME:

DEVELOPMENT ADDRESS:

DEVELOPMENT DETAILS:

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

ESTIMATE DETAILS:

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

I certify that I have:

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

Signed: _____

Name: _____

Position and Qualifications: _____

Date: _____

(Acknowledgment to City of Sydney for use of the model cost reports)