

ITEM 5. CITY OF SYDNEY SECTION 94 DEVELOPMENT CONTRIBUTIONS PLAN 2006 – REVIEW OF PUBLIC EXHIBITION**FILE NO: S033659****SUMMARY**

The *Draft City of Sydney Section 94 Development Contributions Plan 2006* (the Draft Plan) will replace and repeal six Section 94 development contributions plans that currently apply to areas within the City of Sydney Local Government Area (LGA).

The Draft Plan will ensure a consistent approach to the levying of Section 94 development contributions across the whole LGA except the areas excluded from this Plan. The areas excluded from this Plan are the *Ultimo Pyrmont s94 Contributions Plan* area, the central business district contributions area levied under Section 61 of the *City of Sydney Act* and the eight Redfern Waterloo Authority strategic sites. The review of the *Ultimo Pyrmont s94 Contributions Plan* is to be a key focus in 2007 and is not included in this current review largely due to differing administration arrangements which are outlined in this report.

The Draft Plan was publicly exhibited during December 2006 and January 2007. This report advises Council of the submissions received in response to the public exhibition. It also reviews and responds to the issues raised by the submissions, outlines the changes made as a consequence of the public exhibition and the draft *Redfern-Waterloo Authority Contributions Plan 2006* and recommends approval of the City's Draft Plan.

RECOMMENDATION

It is resolved that:

- (A) Council approve the contributions plan, shown at **Attachment A** to the subject report, pursuant to Clause 31 (1)(b) of the *Environmental Planning and Assessment Regulation 2000* as the *City of Sydney Section 94 Development Contributions Plan 2006*, with its operation to commence from the date specified in the publication of its Notice of Approval;
- (B) authority be delegated to the Chief Executive Officer to make any minor drafting changes that may be required as a result of the Central Sydney Planning Committee's and Council's consideration of the *City of Sydney Section 94 Development Contributions Plan 2006*;
- (C) Council approve the amendments to Schedule 1A of the *Standard Conditions of Consent*, shown at **Attachment B** to the subject report which adds conditions relating to Section 94 development contributions arising from the adoption of the *City of Sydney Section 94 Development Contributions Plan 2006*;
- (D) Council repeal the following contributions plans under the provisions of Clause 32 (2)(a) of the *Environmental Planning and Assessment Regulation 2000* from the date which the *City of Sydney Section 94 Development Contributions Plan 2006* takes effect:-

- (1) *South Sydney Section 94 Contributions Plan 1998*;

- (2) *South Sydney Section 94 Contributions Plan 2003*; and
- (3) *South Sydney Section 94 Contributions Plan: Multi-function Administration Centre*

in their entirety; and

- (4) *Leichhardt Community Facilities and Services Contributions Plan*;
- (5) *Leichhardt Open Space and Recreation S94 Plan*; and
- (6) *Leichhardt Transport and Access S94 Plan*

insofar as they apply to those parts of Leichhardt Council transferred to the City of Sydney on 8 May 2003.

ATTACHMENTS

Attachment A: *City of Sydney Section 94 Development Contributions Plan 2006* – to be circulated separately from the Agenda Paper.

Attachment B: Amendments to Schedule 1A of the *Standard Conditions of Consent*.

Attachment C: Land to which the Draft Plan applies.

Attachment D: Resolution of Council of 20 November 2006 and Resolution of the Central Sydney Planning Committee of 16 November 2006, respectively, to publicly exhibit the Draft Plan.

Attachment E: Summary table of submissions and City of Sydney responses.

BACKGROUND

1. Section 94 of the *Environmental Planning and Assessment Act 1979* permits Local Government to seek contributions from development which increases the population, and therefore the demand for facilities and infrastructure. The contributions provide for additional facilities and infrastructure to meet the needs of the new population.
2. Section 94 contributions can be monetary, by land dedication, by physical works embellishing that land, or material public benefits or any combination of the above.
3. The Section 94 contributions system has a number of principles which must be fulfilled in order to levy for development contributions. These are:
 - (a) **Nexus** (causal, temporal and spatial) - Local Government must establish the nexus or the “link” between a new population and the works to be provided.

Causal nexus – the proposed development creates a need or increases the demand for a particular public facility or service;

Spatial or physical nexus – the proposed public facility or service will be located to serve the needs of those who created the demand for it;

Temporal nexus – the proposed public facility or service will be provided within a reasonable time to benefit those who contributed towards it.
 - (b) **Apportionment** – where a new or upgraded facility or work will provide benefit to a wider population, the cost of that work must be fairly apportioned between the new and existing population. Developers then pay contributions on behalf of the new population, and Council’s contribute funds on behalf of existing populations.
 - (c) **Reasonableness** – ensures that contributions are reasonable and equitable.
4. The Draft Plan establishes the nexus, apportionment and reasonableness of the proposed works program which includes new local open space, embellishment of existing parks and streetscapes, community facilities (child care centres, libraries, youth, recreation and aquatic facilities) and accessibility works (local area traffic management, pedestrian access mobility plans and cycle and road works).

Land to which the Plan Applies

5. The land to which this Draft Plan applies is shown at **Attachment C** to this report. It is important to note that the area of the LGA which contains the Central Business District (CBD) does not apply to this Draft Plan as it is subject to Section 61 of the *City of Sydney Act 1988* which imposes a fixed levy of 1%. The Ultimo-Pyrmont area has also not been included in this review as the Sydney Harbour Foreshore Authority (SHFA) continues to recoup funds for works already provided in this area.

Exhibition of the Plan

6. Council, at its meeting of 20 November 2006, resolved to endorse the public exhibition of the Draft Plan for a period of 50 days, which is an extension of the minimum period of 28 days in accordance with the *Environmental Planning and Assessment Regulation 2000*. Council also endorsed the undertaking of a consultation strategy to ensure that the community and stakeholders, such as the development industry, were informed of the Draft Plan. The resolution is at **Attachment D** to this report. The CSPC considered the matter at its meeting on 16 November and made a similar resolution also at **Attachment D**. The exhibition of the Draft Plan is discussed in the "Public Consultation" section of this report.

KEY IMPLICATIONS

7. The Draft Plan will provide an equitable and cohesive approach to the levying of development contributions in the City of Sydney. The proposed works program provides a comprehensive range of works for the area to which the Draft Plan applies. The works program includes:
 - (a) the acquisition and embellishment of open space, parks and civic spaces;
 - (b) accessibility works, including new roads, local area traffic management, pedestrian access mobility plans and the implementation of the cycle strategy;
 - (c) the construction and embellishment of community facilities, including child care centres, libraries, youth, recreation and aquatic facilities; and
 - (d) the cost of preparation and implementation of the Draft Plan.
8. The Draft Plan also facilitates co-operation between developers and the City of Sydney to ensure the time and cost effective delivery of facilities and infrastructure via newly introduced mechanisms, such as Planning Agreements, and the dedication of land and works in kind arrangements.

Contributions rates

9. The contributions rates for each precinct remain the same as proposed prior to exhibition. While the Property Council commented that the contribution rates were reasonable, some submissions did express concern that the contributions for the Southern Precinct of the Draft Plan have risen significantly in comparison to the current contribution rates. This issue is discussed in further detail in the Public Consultation section of this report.

Redfern Waterloo Authority Draft Contributions Plan

10. *The Redfern Waterloo Authority's Draft Contributions Plan 2006* was on exhibition in November and December 2006. It provides for a 2% levy on the cost of development for the eight Redfern Waterloo Authority strategic sites plus any other development within the Redfern Waterloo Authority operational area where the Planning Minister is the consent authority. The Draft Plan excludes these sites from any of Council's development contributions plans. It is prepared in accordance with the *Redfern-Waterloo Authority Act 2004* and is not a Section 94 or Section 94A Contributions Plan under the *Environmental Planning and Assessment Act 1979*.

11. The *Draft Redfern-Waterloo Authority Contributions Plan 2006* and the *City of Sydney Draft Development Contributions Plan 2006* are mutually exclusive. It appears that the two contributions plans fund different community infrastructure though this is not yet officially confirmed. In its submission on the *Draft Redfern Waterloo Authority Contributions Plan 2006* the City of Sydney supports the aim of revitalising the Redfern-Waterloo area. In summary, the City of Sydney's key issues and recommendations are:
 - (a) Open Space provision: The Redfern-Waterloo Authority has not made a commitment to maintain the current per capita rates of open space and the relatively low 2% contribution rate cannot provide enough open space to maintain current rates. It is recommended that a detailed public domain and an open space strategy be prepared to ensure a sufficient quantity of additional high quality, safe, accessible public spaces;
 - (b) Financial Risk: The works program is general in nature and there is uncertainty as to the scope of cost estimates for these works. It is recommended that the Redfern-Waterloo Authority identify infrastructure standards and outcomes, and ensure adequate funding to achieve them;
 - (c) Adequacy: The City questions whether the proposed rate will be sufficient to provide the required infrastructure for the future of the area. It is recommended that the Redfern-Waterloo Authority investigate an increase in the proposed 2% levy in the range of up to 7% to ensure adequate open space and infrastructure are provided; and
 - (d) Infrastructure Working Group: The City strongly supports the establishment of a working group of the Redfern Waterloo Authority, the Roads and Traffic Authority, Ministry of Transport, State Transit, State Rail Authority and the City of Sydney to coordinate infrastructure and asset planning.
12. In response to a Redfern Waterloo Authority submission the *City of Sydney Draft Contributions Plan 2006* has been amended to clarify the application of the Draft Plan to the sites subject to the eight Redfern Waterloo Authority strategic sites. In addition the map which shows the land to which the Draft Plan applies has been revised to exclude RWA sites from the application of the Draft Plan.
13. The Redfern Waterloo Authority recently placed on public exhibition the *Draft Redfern Waterloo Authority Affordable Housing Contributions Plan 2006* which will levy development contributions to the eight Redfern Waterloo Authority strategic sites. These contributions will be in addition to the 2% levy. The City of Sydney's Draft Plan does not levy for affordable housing, which is separately dealt within existing planning instruments applying in the LGA.

Standard Conditions of Consent

14. This report recommends additional standard conditions of consent in relation to the Draft Plan. The standard conditions of consent from previous plans will remain in use as standard conditions as Section 96 amendments to development applications refer to the Section 94 plan and the conditions of consent which were used in determining the application. The recommended additions to the Standard Conditions of Consent are **Attachment B** to this report.

FINANCIAL IMPLICATIONS

15. The Draft Plan contains a capital works program with a total value of \$584M. This includes some works which have been included within earlier contributions plans and will now be levied over the population increase from 1996-2021, such as the Green Square community facility and new roads.
16. The Draft Plan includes capital works of \$406M that will be 100% funded by development over the life of the Plan as the need can be wholly apportioned to that additional demand. The works include significant sums for new open space, \$195M for new parks in the Southern Precinct where the majority of growth is occurring, \$50M for new parks in the Western Precinct; and \$21M for the Eastern Precinct. The Plan also provides for new roads in the Southern Precinct of \$73M, a new multi-function community facility for the Green Square area at a cost of \$38M and additional childcare across the three precincts to a value of \$11M. It is anticipated that the majority of parks and, potentially, some of the roads and childcare centres will be dedicated by developers as works in kind.
17. The Plan also allows for the partial recoupment of \$178M of capital works that have already been completed, or are within the current capital works program, as these works will benefit both the existing and the future population within the three precincts. This includes \$138M of works to existing parks and streetscapes, \$28M towards new and existing community facilities, and \$11M for accessibility works. Developer contributions to these works have been limited to 24% of the projected total cost of the works reflecting the proportion of the new population to the entire forecast population within these areas.
18. In all, it is estimated that the plan could achieve total contributions of \$434M towards the \$584M of works over the next 15 years, with the remaining \$150M to be funded by Council. It is anticipated that developers may provide as much as \$255M as works in kind (e.g. dedication of open space, childcare, or road infrastructure) with the balance of \$179M to be received as cash contributions to 2021.
19. It is important to note that the nominated works within the plan are only one element of Council's total Capital Works programs across the LGA for the next 15 years, and that the vast majority of the greater program will be completely funded by Council.
20. The estimated contributions flowing from the Draft Plan are subject to a number of risks including the assumptions in regard to population growth and the current floor space yields (currently under review as part of the City Plan).
21. A further financial risk is that the State Government has the capacity to declare any development 'state significant' which gives the Minister for Planning discretion to apply a council's Contributions Plan or to negotiate any other arrangement with any developer.
22. It is also important to recognise that plans are reviewed over their lifecycle and that on release of the 2006 Census data, expected to be finally released in 2008, another review of the proposed Plan will need to be undertaken.

Redfern Waterloo Development Contributions

23. As outlined above, the Minister for Planning has exhibited the Draft Redfern Waterloo Contributions Plan which excludes the eight Redfern Waterloo strategic sites from Council's development contributions plans.
24. Under the *State Environmental Planning Policy (Major Projects) 2005*, Council's planning controls no longer apply to these sites. However, if these sites were to redevelop under the previously applying controls and the City's Draft Plan it is estimated that Council would receive approximately \$6.6M in developer contributions. It is considered appropriate to maintain the Draft Plan contribution rates as exhibited having consideration for the contribution rates in the surrounding LGAs and the feedback received during the current exhibition period.
25. Under their draft Contributions Plan, the Redfern Waterloo Authority will provide \$28.5M in community infrastructure, albeit for a much larger population and including the Australian Technology Park site, which was already excluded from Council's planning controls.

RELEVANT LEGISLATION

26. The *City of Sydney Section 94 Development Contributions Plan 2006* has been prepared in accordance with the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000* and with reference to the Development Contributions Practice Notes issued by the Department of Planning in July 2005.

PUBLIC CONSULTATION

27. The Draft Plan was placed on public exhibition from 2 December 2006 until 25 January 2007. The exhibition was advertised in the Sydney Morning Herald and on Council's website. In addition, letters were sent to approximately 25 stakeholders, including government organisations, community groups, planning consultants and developers who work within the City of Sydney Local Government Area. Seven submissions were received from the following organisations:
 - (a) Housing Industry Association;
 - (b) Property Council of Australia;
 - (c) Pyrmont Action community group;
 - (d) Redfern Waterloo Authority;
 - (e) The Glebe Society Inc;
 - (f) Ultimo Village Voice community group; and
 - (g) Urban Taskforce.
28. The submissions are summarised in the table in **Attachment E** to this report. The key issues are summarised below.

Scope of the Plan

29. The submissions generally support the review and consolidation of Council's existing contributions plans. However, community groups expressed concern that the *Ultimo Pymont s94 Contributions Plan* is not included in this review. The City intends to review the Ultimo Pymont Plan, however we share the administration of this Plan with the Sydney Harbour Foreshores Authority (SHFA). The City and SHFA are yet to resolve and agree upon the future of developer contributions planning for Ultimo Pymont. The Draft Plan as exhibited is considered important to proceed with as it will create a single developer contributions framework, replacing 6 disparate schemes. The process of review for developer contributions in Ultimo Pymont has commenced, and liaison with SHFA will continue with the goal of determining a future contributions strategy for Ultimo Pymont.
30. As commented earlier in this reports the Redfern Waterloo Authority raises 2 concerns relating the scope of the Draft Plan. Firstly, that the Draft Plan assumes the application of both the Draft Plan and the Draft Redfern Waterloo Contributions Plan. The text and maps of the Draft have been amended to clarify that this is not the case.
31. Secondly, that the residential and worker populations are inappropriately included in the calculations and nexus arguments for works in the Southern Precinct. It is considered appropriate to include these populations because the population increases from these sites will generate demand for Council provided services. While it is acknowledged that the loss of development contributions will require Council to further subsidise the planned works, it is felt that the proposed contribution rates have already been set at appropriate levels. Therefore, no change is proposed to the works program or the way the contribution rates will be calculated.

Contributions rates

32. A number of submissions express concern at the increase in contribution rates for the Southern Precinct. Within the Southern Precinct, in the Green Square area, the rise in contribution rates is marginal, however within the Southern Precinct outside of the Green Square area, there is a more significant rise in the contribution rate. This increase is not considered unreasonable nor a deterrent to investment in the Southern Precinct, due to the factors which contribute to this rise. These include:
 - (a) Over 60% of the Contribution Rate in the Southern Precinct relates to additional open space. The contribution rate increases are primarily driven by increases in land value. For example land values in the Draft Plan have quadrupled from those in the *South Sydney Contributions Plan 1998*; and
 - (b) the works program for this area previously only included contributions for the acquisition and embellishment of open space, accessibility and management of the Plan. No provision has been made for community facilities.
33. A process of benchmarking the proposed contributions rates against LGAs which exhibit similar development characteristics has shown that the proposed contributions rates compare favourably to those of other LGAs considering the level of infrastructure required and the cost of land.

34. The proposed works program only seeks to maintain the per capita rate of provision for open space, community facilities and accessibility facilities and infrastructure. The works program also provides a level of flexibility in the locations of works to be provided. For instance, open space or child care centres can be provided in locations where they will benefit the developments that generate the need for them. A lack of community facilities and open space may disadvantage future communities and deter investment.

Administration of the Plan

35. A number of submission raised issues about the operation of the Draft Plan and clarifying its application. In relation to the operation of the plan Council will continue to operate in accordance with relevant legislation and Department of Planning Guidelines. Where appropriate the Draft Plan has been amended to clarify its application.

Changes to the Plan

36. The Draft Plan at **Attachment A** includes some minor changes in response to submissions made, and also to correct minor errors and spelling mistakes. Text proposed for deletion is shown in ~~strikeout~~ with new text proposed for inclusion in the Draft Plan shown in ***bold italics***. A full summary of submissions received is at **Attachment E** to this report

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