



PENRITH

CULTURAL FACILITIES

Section 94 Development Contributions Plan

Adopted by council on 5th May 2003
Plan takes effect on 5th August 2003

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1.0 INTRODUCTION

1.1 WHAT IS SECTION 94?

Section 94 of the Environmental Planning and Assessment Act 1979, as amended, empowers Councils to levy contributions from developers for the provision of public amenities and services which are required as a consequence of development.

The Land and Environment Court has determined that section 94 is the sole mechanism that a Council can use to levy contributions from a developer.

The application of Section 94 follows three general principles:

1. The contribution must be for, or relate to, a planning purpose.
2. The contribution must fairly and reasonably relate to the subject development.
3. A reasonable planning authority, duly appreciating its statutory duties, could properly impose the contribution.

Under section 94(1) a Council is able to impose a condition on any development consent, requiring a contribution:

1. to provide works or facilities to be carried out in the future from which the development or its occupants will benefit; or
2. to fund works or facilities which have already been constructed from which the development or its occupants will benefit.

Backlogs in services and facilities which are required to meet the needs of existing development cannot be funded through section 94.

In major growth areas such as Penrith, it is important that new baseline facilities and services are provided to sustain an acceptable standard of provision. By using contributions from developers for the provision of essential amenities and services, Council can significantly reduce the burden of cost of additional urban development on existing residents.

1.2 TYPES OF CONTRIBUTIONS

Section 94 makes provision for three methods of satisfying a contribution requirement:

1. Dedication of land to Council free of cost.
2. Monetary contribution.
3. Works in kind (Material Public Benefit - physical components not being land, which are of benefit to the general community)

1.3 PURPOSES OF THIS PLAN

The purposes of this Plan are to:

1. Enable the levying of developer contributions for the provision of Cultural Facilities in the areas affected by this plan, as a consequence of increased demand by additional population generated by new residential development including, but not limited to **housing for older people, multi-unit housing** (including integrated housing), **shop top housing, dual occupancy** and **subdivision** across the whole of the City (subject to clause 3.0), and
2. Set down Council's aims and objectives of this Plan, and a policy for raising, holding and expending section 94 contributions.

1.4 FINANCIAL INFORMATION

Council maintains a contributions register in accordance with Division 5 of the Environmental Planning and Assessment Regulation.

Council maintains a separate accounting record for this Plan. It contains details of contributions received and expended, including interest on contributions. These records are available for inspection free of charge.

1.5 PLAN REVIEW

The Plan will be reviewed and updated from time to time on a needs basis. These reviews will be advertised and adopted in accordance with the legislation and regulation.

1.6 INTERPRETATION

Terms used in this plan which are defined in Penrith Local Environmental Plan 1998 Urban Land (as amended) have the meanings set out in that plan.

2.0 AIMS AND OBJECTIVES

The aims and objectives of the Plan are to:

- a) Provide a basis for levying developer contributions over development which increases population within areas affected by this Plan for the provision of cultural facilities;
- b) Identify the cultural facilities to be provided within the area affected by this Plan;
- c) Ensure that the provision of cultural facilities is adequate to satisfy the demand generated by additional development and population growth; and
- d) Employ a user pays policy regarding the funding of services and amenities to ensure that existing residents of the City do not have to subsidise new urban development.

3.0 LAND AFFECTED BY THE PLAN

This Plan applies anywhere residential development is permitted within the City of Penrith.

4.0 RELATIONSHIP TO ENVIRONMENTAL PLANNING INSTRUMENTS

This Plan enables the levying of developer contributions where residential development (including subdivision) is permissible in the City of Penrith.

A range of environmental planning instruments, which set down zoning provisions and development standards for the targeted areas, apply. In the urban areas, the principal planning instrument is Penrith Local Environmental Plan 1998 Urban Land. This plan will ultimately replace existing residential planning controls for the urban areas of the City with a single residential plan. In the rural areas, the main planning instrument is Penrith Local Environmental Plan No. 201 – Rural Lands, which sets out land use and subdivision controls for these areas.

Other planning instruments are applicable to certain residential areas of the City affected by this plan, including:

- the Penrith Planning Scheme
- IDO 93 (as amended) (Rural Lands)
- LEP 188 (as amended) (Glenmore Park)
- LEP 1997 (Penrith City Centre)
- LEP 1998 (Lakes Environs), and
- Other minor planning instruments and amendments.

5.0 NEXUS

This Plan adopts as its basic rationale the following principles in establishing nexus:

- a) The provision of a service and/or facility via a section 94 contribution is a measurable consequence of the proposed development.
- b) The services and/or facility can be physically provided within a reasonable timeframe.
- c) Contributions raised under this plan are expended on a City- wide basis for the provision of cultural facilities including the Joan Sutherland Performing Arts Centre and the Penrith Valley Community Arts Precinct.

5.1 CULTURAL FACILITIES NEXUS

The nexus between new development and the provision of cultural facilities is related to:

- a) An increase and densification of population within the City of Penrith, which will increase the demand for cultural facilities, and will require Council to expend funds before it otherwise would, and
- b) The requirement to maintain cultural facilities at the minimum standard per head to meet the community's demands.

6.0 JUSTIFICATION FOR CONTRIBUTION

6.1 BASIS FOR CONTRIBUTION

This plan sets the contribution for the redevelopment and expansion of existing cultural facilities in response to the City's population growth, which places increased demands on cultural facilities for both educational and entertainment purposes.

6.2 APPORTIONMENT

Apportionment is a process which ensures that the contributing population only pays for its share of the proposed facilities. Only the proportion of the cost of providing the facilities attributed to the demand arising from new development within the catchment area is funded through this Plan.

The estimated population increase in 20 years, to the end of 2022, is by 57,152 to a total of 233,362, which represents an increase of 24.5% (refer to **Schedule 3**).

Therefore, 24.5% of the costs relating to the development associated with the Joan Sutherland Performing Arts Centre and the Penrith Valley Community Arts Precinct can be apportioned to incoming residents (refer to **Schedule 3**).

6.3 EXPLANATION OF CONTRIBUTION RATE PER PERSON

To determine the contribution rate per person, the total cost of cultural facilities works relating to the Joan Sutherland Performing Arts Centre and the Penrith Valley Community Arts Precinct has been evenly distributed over the additional population estimate. The cost of design and supervision has been included. The administrative component of the formula is required for the monitoring, review and implementation of the Plan, for which Council must dedicate staff and administrative resources to the task. The administration levy of 1% is applied to the apportioned contribution.

The following Formula is used to calculate the contribution rate:

$$\text{Contribution Rate (\$/person)} = C \times A (+ 1\% \text{ administration}) / P$$

Where: **C = \$17, 571, 618**

being the projected expenditure by Council for works relating to the Joan Sutherland Performing Arts Centre and the Penrith Valley Community Arts Precinct during the plan period.

A = 24.5%

Which is the cost of the facility apportionment to new residents under this plan, based on their proportion of the total population of the catchment area.

P = 57,152

which is the estimated additional population for the area affected by this plan at the end of the plan period.

These costs have been indexed using estimates of the CPI (All Groups-Sydney), these estimates being sourced from Commonwealth Bank Economic Research documents. These indexed Contribution Rates are published in the Fees and Charges Section of Council's Management Plan. Section 7.4 of this Plan refers to the indexation method which will be applied to this Plan.

The current list of Council's Works in relation to cultural facilities is reproduced in **Schedule 1**. A full explanation of the basis of this formula is set out in **Schedule 2**.

7.0 CONTRIBUTION RATES FOR NEW DEVELOPMENT

7.1 WHAT TYPES OF DEVELOPMENT WILL BE LEVIED?

This Plan requires that a contribution be applied to new residential development including, but not limited to, **housing for older people, multi-unit housing** (including integrated housing), **shop top housing, dual occupancy** and **subdivision**.

7.2 OCCUPANCY RATES

For the purposes of calculating the total cultural facilities contribution, the following **occupancy rates** for different types of new development have been determined:

▪ Multi-unit and Shop-Top Housing	2.4 persons for each new dwelling
▪ Dual Occupancies and Subdivision	3 persons for each new dwelling or new lot
▪ Housing for older people	1.5 persons for each new dwelling ¹

The above occupancy rates are based on ABS 1996 Census figures for Penrith.

7.3 HOW TO CALCULATE THE TOTAL CONTRIBUTION FOR NEW DEVELOPMENT

The **total cultural facilities contribution** for new development is calculated as follows:

$$\text{Total Contribution} = \text{Contribution Rate at Schedule 2} \times \text{Occupancy Rate} \times \text{Number of new dwellings or new lots}$$

Where there is an existing development on the land, Council may, at its discretion, reduce the contribution having regard to the principles of the Plan, the increased demand for cultural facilities, and the number of existing dwellings on the land.

Credits for existing occupancy and vacant allotments apply, and will be calculated as follows:

*The total occupancy rate of the proposed development **minus** the occupancy rate of the existing development [being either the existing allotment(s) or the existing dwelling(s), whichever is greater].*

The occupancy rate of a vacant allotment, or an allotment where no residential uses exist, will be calculated as the equivalent of one existing dwelling.

¹

In 1996, just over one-quarter (28%) of all older people lived alone. The majority of older people (63%) were living in family households, most of these with their partners. (Source "4109.0 Older People, Australia: A Social Report, 1999", Australian Bureau

of Statistics). In the case of housing for older persons, an average occupancy rate of between 1 and 2 persons per new dwelling (1.5 persons) will be adopted in this Plan.

7.4 REVIEW AND INDEXATION OF CONTRIBUTIONS

The section 94 contribution rate will be indexed. This indexing is based on the Consumer Price Index (All Groups Sydney) or equivalent index system or a projection thereof. The indexing will be published in Council's Annual Management Plan in July each year and will list the rates for the next 12 month period.

In addition Council may review the entire Contributions Plan, and subject to the regulations could adopt new contribution rates.

There will also be periodic reviews of the Plan and the cost of items. At the time of these reviews the revised contribution rate will not apply to developments that have already been approved or have been completed.

The method of establishing the contribution rate shall be to estimate the result that would be achieved by applying the following formula on a quarterly basis:

$$NR = OR \times CI/EI$$

Where: **NR** is the new contribution rate,
OR is the contribution rate at adoption of the plan,
CI is the latest Consumer Price Index (All Groups Sydney), and
EI is the Consumer Price Index (All Groups Sydney) which applied at the date of adoption of the Plan.

This formula automatically adjusts in the first quarter of each Management Plan for prior estimation errors.

8.0 METHOD AND TIMING OF PAYMENT

8.1 ISSUE OF CONSENT

When a development consent is issued for a development, any contributions required under this Plan will be listed in the conditions attached to the consent. The conditions will indicate the contributions required, and the time allowed for the payment of the contribution at that stated rate.

Where a development proposal involves work in kind, or the transfer of land to Council, for public purposes identified in the section 94 budget, the item and the corresponding estimate in the budget will be described in the conditions of consent.

8.2 INDEXATION OF CONTRIBUTIONS AFTER ISSUE OF CONSENT

The contributions payable are stated in a consent at the value payable during the current quarter. Amounts for future quarters are published in the Management Plan current at the time and in subsequent Management Plans. Should the applicable contribution rates not be validly published in the Management Plan, the rate applicable will be calculated in accordance with the indexing method in Clause 7.4 of this Plan.

In the event that contributions are not received when due, interest will accrue on the debt at a rate equal to that which is due on unpaid Council rates and indexation will cease.

In the event that a contribution is assessed on this Plan, and a subsequent or amended Plan comes into force before payment is due, the developer may elect that the payment is due under this Plan as at the day before a new Plan comes into effect. As at that time, indexation ceases and interest applies in accordance with this part. This election may be made while the development consent remains valid.

8.3 METHOD OF PAYMENT

Payment may be made by any means acceptable to Council provided that if the payment is not by cash or by bank cheque then:

- any costs or commission payable by Council on the transaction or its collection must also be paid, and
- the payment shall not be deemed to be received until Council's bankers acknowledge the funds are cleared.

8.4 TIMING OF PAYMENT

▪ Subdivision applications	Payment to be made prior to Council signing and releasing linen plan of subdivision
▪ Development Applications Involving Building Work	Payment to be made at the time of building approval.
▪ Development Applications where no Building Approval is required	Payment to be made prior to occupation of the premises

8.5 DEFERRED PAYMENT OF CONTRIBUTIONS

Council will give consideration to any request for deferment of contributions on its merits. However, the developer must make written application. Interest will be charged on deferred contributions equal to the rate applicable to overdue Council rates.

If Council grants such a request, it is conditional upon the applicant providing a suitable Bank Guarantee and Deed of Agreement.

A period for deferral of a contribution will be agreed between the applicant and Council prior to preparation of the Bank Guarantee. The Bank Guarantee will be required to be valid for at least twelve months after the end of the agreed period.

The period may be extended in circumstances acceptable to Council.

The amount of the Bank Guarantee will be calculated in the following manner:

$$G = C(I + 1)^P, \text{ where:}$$

G is the amount of the Bank Guarantee;

C is the contribution owing at the time the contribution is due;

I is the estimated compound interest rate set by Council; and

P is the period covered by the guarantee.

The guarantee will be terminated when the payment of cash meets the liability.

The Deed of Agreement is to be prepared by Council's solicitors at full cost to the applicant.

Council also charges an administrative fee for deferred payment of contributions.

The Bank Guarantee will be redeemed by Council should contributions not be paid by the due date.

SCHEDULE 1 - EXAMINATION OF COSTS RELATING TO THE DEVELOPMENT OF CULTURAL FACILITIES

This schedule indicates a suggested list of works in relation to cultural facilities in Penrith to the year 2022. The actual works to be undertaken each year will be the subject of Council's annual Management Plan.

Joan Sutherland Performing Arts Centre

<i>Location</i>	<i>Proposed development</i>	<i>Cost</i>
High St, Penrith CBD	A new 400 seat drama theatre Additional backstage facilities and dressing rooms New unloading and workshop facilities Fifteen (15) teaching rooms for the music conservatorium New multi-purpose foyer and display area Upgrade existing western foyer including air conditioning Architectural fees Consultant fees	
	Total Cost	\$ 13,451,718

Penrith Valley Community Arts Precinct

<i>Location</i>	<i>Proposed development</i>	<i>Cost</i>
Mamre Road, St Marys	Community Hall - stage 1 (internal modifications) Community Hall – stage 2 (additions) Memorial Hall (refurbishment and additions) Driveway access, roundabout, carpark, landscaping Child Care Centre (extensions)	
	Total Cost	\$ 4,119,900

Both Citywide Cultural Facilities

<i>Location</i>	<i>Proposed development</i>	<i>Cost</i>
Penrith	Joan Sutherland Performing Arts Centre	\$ 13,451,718
St Marys	Penrith Valley Community Arts Precinct	\$ 4,119,900
	Total Cost	\$ 17,571,618

SCHEDULE 2 – SCHEDULE OF VALUES IN THE CONTRIBUTION RATE FORMULA

Contribution Rate per Person

[Clause 6.3]

Contribution Rate [\$/person] = **C x A (+ 1% administration) / P**

$$\begin{array}{r} \frac{(\$17,571,618 \times 24.5\%) \times 101\%}{57,152} \\ \frac{\$4,305,046 \times 101\%}{57,152} \\ \frac{\$4,348,096}{57,152} \end{array} \quad \begin{array}{l} + \text{any current indexed increases [Clause 7.4]} \\ + \text{any current indexed increases [Clause 7.4]} \\ + \text{any current indexed increases [Clause 7.4]} \end{array}$$

\$76.00 per person

[as at Date of Adoption of this Plan, rounded to the nearest dollar]

Where C = **\$17,571,618** being the projected project costs to Council for works relating to the cultural facilities mentioned in this plan over 20 years from 2002. [refer to **Schedule 1**]

Where A = **24.5 %** being the percentage of anticipated population growth in the Penrith LGA in relation to the total estimated population in 20 years and the costs of the facility apportioned to new residents under this plan. [refer to **Schedule 3**]

Where P = **57,152** which is the estimated additional population at the end of 20 years from 2002. [refer to **Schedule 3**]

SCHEDULE 3 – DEVELOPMENT ASSUMPTIONS ABOUT THE PENRITH LGA

Estimate Of Dwelling And Population Potential Penrith April 2003

category	location	total dwellings	population	new urban areas (ha)
Metropolitan Development Program	ADI (Penrith component)	3 350	10 000	380
	Caddens Release Area	1 300	3 900	100
	Claremont Meadows Stage 2	500	1 500	50
	Erskine Park	80	240	8
	Glenmore Park (existing)	290	990	30
	Lakes Environs	640	1 530	95
	North Penrith Urban Area	850	2 000	50
	Werrington Mixed Use Area	190	522	22
	MDP total	7 200	20 682	735
Unconfirmed Release Areas	Penrith Lakes	4 900	14 000	400
	Glenmore Park Expansion Area (Bradley Street)	1 200	3 600	125
	Unconfirmed Release Areas Total	6 100	17 600	525
Infill	Rural Areas	460	1 380	
	Multi unit housing	2 700	6 480	
	Dual Occupancies (fringe)	2 270	6 810	
	Shop top housing	1 400	3 360	
	UWS (student housing)	350	840	
	Infill Total	7 180	18 870	
TOTAL Potential		20 480	57 152	
Existing Urban / Rural	Penrith LGA ERP 2003 (ABS population figure for Penrith on 7 August 2001 was 172, 397. ERP is based on 1.1% growth p.a.)	59 000	176 210	
TOTAL LGA		79 480	233 362	

Note: Estimates are derived from a number of sources including the ABS, State Government Metropolitan Development Program annual reviews and developer updates. Figures are subject to regular review.