



PENRITH



LAMBRIDGE INDUSTRIAL ESTATE NORTH PENRITH

Section 94 Development Contributions Plan

Adopted by council on 6th December 2004
Effective from on 21st December 2004

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1. INTRODUCTION

1.1 WHAT IS SECTION 94?

Section 94 of the Environmental Planning and Assessment Act 1979, enables 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 have 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:

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

Under Section 94(1) a council is able to impose a condition on any development consent requiring a contribution to:

- (i) provide works or facilities to be carried out in the future; or
- (ii) fund works or facilities from which the development or its occupants will benefit.

1.2 TYPES OF CONTRIBUTION

Section 94 makes provision for three (3) methods of payment of contribution:

- (i) dedication of land to Council free of cost;
- (ii) monetary contribution; and
- (iii) works in kind (Material Public Benefit - physical components not being land, which are of benefit to the general community).

1.3 PURPOSE OF THIS PLAN

This Plan sets down Council's policy for raising, holding and expending Section 94 contributions within the Lambridge Industrial Estate North Penrith Area.

Contributions within the Lambridge Industrial Estate North Penrith Area are levied on a per developed hectare basis for Drainage/Water Quality facilities, and on a per developed hectare basis for Roads and Traffic Management facilities.

Although it is intended that Council would usually levy development contributions under this plan with development approvals for subdivision works, Council may in certain circumstances elect, at its sole discretion, to levy the development contributions with development approvals or complying development certificates for building works.

A levy for plan administration is also charged, based on a proportion of the total contribution payable. It is anticipated that it may be appropriate to borrow money to fund the Works in advance of contributions being received. If money is borrowed, the contributions will need to fund the interest costs.

All contributions will be adjusted quarterly in accordance with the appropriate indexes, and trends in the costs of components. Details of the current rates as adopted, may be obtained from Council. Contribution rates and their underlying basis will be regularly reviewed.

A formula has been developed for each item in order to calculate the contribution rate within the contribution plan area. The formula takes into account the following:

- cost of works; and
- size of the developable area.

1.4 FINANCIAL INFORMATION

Council maintains a contributions register in accordance with clause 34 of the Environmental Planning and Assessment Regulation 2000.

A separate accounting record is maintained by Council's Financial Services Department for this Plan. It contains details of contributions received and expended, including interest earned, for each contribution category. These records are available for inspection free of charge at Council.

1.5 PLAN REVIEW

The Plan will be reviewed and updated periodically based on development rates and levels of facility provision. Any infrastructure works that have been constructed by Council at the date of review will be carried forward in the adjusted works schedule at their actual cost plus any accrued interest payments on borrowed funds used to construct the works. The revised plan will be advertised and considered in accordance with the legislation and regulations.

2. GENERAL

2.1 AIMS AND OBJECTIVES

The aims and objectives of this plan are:

- (a) to ensure that the level of provision of facilities and services is adequate to satisfy the demand generated by additional development;
- (b) to ensure the equitable recovery of the costs of major capital works necessary for development to occur;
- (c) to ensure the equitable distribution of costs associated with works installed in the course of or after development;
- (d) to levy Section 94 contributions within the Lambridge Industrial Estate North Penrith Area for the purposes of drainage/water quality, roads and traffic management facilities and administration; and
- (e) to ensure that the contributions levied on development are reasonable.

2.2 LAND AFFECTED BY THE PLAN

The land affected by the plan is known as the Lambridge Industrial Estate North Penrith Area as covered by Penrith Local Environmental Plan 1996 (Industrial Land). Maps 1, 2 and 3 of this plan indicate the area covered by this plan.

2.3 DEVELOPABLE AREA

Developable area for the purposes of determining contribution rates in this Plan means the total site area of any particular site less certain specific land to be excluded. The Lambridge Industrial Estate area totals approximately 19.1 hectares, of which approximately 6.8 hectares remains available for development.

2.4 RELATIONSHIP TO OTHER PLANS

The land is affected by Penrith Local Environmental Plan 1996 (Industrial Land) and the Penrith Development Control Plan 1996 (Industrial Land). These plans provide the statutory framework for subdivision and development of the land.

To the extent that it is not inconsistent, this plan operates in addition to other section 94 contributions plans.

No other contribution plans apply to commercial development in this area at the time of issuing this plan. Should a contribution be required under another section 94 plan, then Council will have regard to the objectives of that plan in determining what contributions will be applicable.

2.5 NEXUS

This plan adopts as its basic rationale the following principles in establishing a nexus between a proposed development and the service or facility:

- provision of a service and/or facility via a Section 94 contribution is a measurable consequence of the proposed development.
- the service and/or facility can be physically provided within a reasonable time interval.

2.5.1 Drainage and Water Quality

New development of any type increases stormwater runoff by increasing the amount of sealed or hard-stand surface areas. Existing natural drainage systems often cannot accommodate additional water flow and flooding may result. As a consequence, existing trunk drainage facilities must either be upgraded or new facilities constructed.

In the case of local roads and local drainage, the applicant will be responsible for providing the necessary roads/drainage works to the property, detailed in the development application and to the satisfaction of Council. Map 1 of the Lambridge Industrial Estate North Penrith Area illustrates the proposed drainage scheme; further details of which are available from Council.

2.5.2 Roads and Traffic Management

The roads existing in the Lambridge Industrial Estate North Penrith Area are of a standard sufficient only to cater for access to certain developed properties in the estate. They do not have the capacity to accommodate increased traffic that will result from the development of the remaining allotments within the estate. In this regard road construction and concrete kerb and gutter will be required. Map 2 of the Lambridge Industrial Estate North Penrith Area illustrates the proposed road construction; further details of which are available from Council.

3. DRAINAGE & WATER QUALITY

The provision of a drainage system for the Lambridge Industrial Estate North Penrith Area is necessary to ensure that urban development is adequately serviced, occurs in an orderly manner and that best practice is applied to stormwater management solutions.

Council has determined that the most effective method to facilitate development is to encourage at-source pollution controls and promote the maintenance of predevelopment flow regimes from all developed land. In considering all Development Approvals, Council will assess the adequacy of the trunk drainage system, downstream of the proposed development and its ability to meet the objectives listed below.

The disposal of any stormwater from all land within the release area shall be to Council's satisfaction. Applicants should consult with Council regarding this requirement prior to the lodgement of a Development Application.

Approval for any development may require the completion of drainage works, as considered necessary.

Additional information can be found in the Penrith Development Control Plan 1996 (Industrial Land).

3.1 OBJECTIVES

The Penrith Development Control Plan 1996 (Industrial Land) includes the following objectives for drainage: -

- (a) to ensure that an adequate and environmentally acceptable method of removing surface water and stormwater is implemented;

Further to this point, the following objectives for drainage are intended;

- (b) to ensure that development in the Estate does not result in the pollution of waterways and that the transportation of pollutants is minimised;
- (c) to ensure that development in the Estate does not create or exacerbate problems relating to saline or highly erodible soils;
- (d) to protect, restore and maintain the physical and biological integrity of the waterways;
- (e) to ensure the overall drainage system is designed to minimise, to acceptable levels, the risk of local flooding.

3.2 LOCAL DRAINAGE CATCHMENT

Indicative pre-design estimates of the required works and costs for the studies are listed below:

Works	Cost	Indicative Timeframe
Preliminaries: Including site establishment, erosion and sediment control, and traffic control.	\$75,000	Drainage works are scheduled for construction during 2005 and 2006, in conjunction with road works.
Pipe and Pit Works: Including excavate, lay and backfill (not including road restoration).	\$820,000	
Water Quality Devices: Including 55 enviro-pods, 2 spel stormceptors, storm filter device, bio-swale and auto sampler.	\$670,000	
Services relocation	\$125,000	
Studies	\$54,000	
Sub-total	\$1,744,000	
10% Contingencies	\$174,400	
10% Design & Supervision	\$174,400	
Drainage Easement Acquisition	\$60,000	
Sub-total	\$2,152,800	
Less: Existing Contributions	<\$1,255,455>	
Total	\$897,345	

3.3 CALCULATION OF CONTRIBUTION RATES

Contributions will be charged as a rate per hectare based on the developable area (as defined in section 2.3 of this plan).

Development contribution rates are calculated exclusive of any taxes or charges payable on the transaction. If the transactions are, or become, liable for GST or any other tax or charge, the contribution payable will be increased accordingly.

Approximately 6.8 ha of land remain available for development (developable area) in the Lambridge Industrial Estate North Penrith Area.

The contribution rate is calculated by dividing the total cost of the works to be provided by the available land area, to reach a contribution per hectare.

$$\frac{\text{Total cost of facilities}}{\text{Developable land available}} = \text{contribution rate / ha}$$

Local Drainage Catchment

$$\frac{\$897,345}{6.8338 \text{ ha}} = \$131,310/\text{ha of developable area}$$

Note: The above contribution rates are applicable as at the date of adoption of this Plan. Contribution rates will be indexed in accordance with Section 5.1 of this Plan.

4. ROADS & TRAFFIC MANAGEMENT

The roads existing in the Lambridge Industrial Estate North Penrith Area are of a standard sufficient only to cater for access to certain developed properties in the estate. They do not have the capacity to accommodate increased traffic that will result from the development of the remaining allotments within the estate. In this regard road construction and concrete kerb and gutter will be required.

The Transport Network Objectives as outlined in the Penrith Development Control Plan 1996 (Industrial Land) are:

- To ensure that new development will not reduce existing level of road safety nor increase the level of traffic congestion.
- To ensure that access for all industrial lots will not significantly affect the function, efficiency and safety of the road network particularly Castlereagh Road, the Great Western Highway, Mulgoa Road and Parker Street.

Details of the road works required for development and to be funded under this plan are outlined in the following section.

4.1 ROAD WORKS

Section 94 funded road works within the Lambridge Industrial Estate North Penrith Area will be conducted in conjunction with the Drainage Works. The extent of road works varies in certain areas of the estate, and is summarised as follows;

4.1.1 Road Works and Kerb & Gutter Works

Lugard Street

The majority of Lugard Street exists as a full width road with Kerb & Gutter. A 210 metre length section of full width road, and Kerb & Gutter is required at the western end of Lugard Street, to match the existing facilities.

Leland Street

Sections of half road construction and Kerb & Gutter are required along most of the length of Leland Street.

Gordon Street

There is presently no pavement or Kerb & Gutter along the length of Gordon Street.

Camden Street

Certain sections of Camden Street require half road construction with Kerb & Gutter, while other sections require full road width construction with Kerb & Gutter.

4.2 APPORTIONMENT OF THE PROPOSED WORKS

Indicative pre-design estimates of the required works and costs for the studies are listed below:

Works	Cost	Indicative Timeframe
Lugard Street		
210 metres kerb and gutter	\$20,790	Road works are scheduled for construction during 2005 and 2006, in conjunction with drainage works.
1180 sq. metres road pavement	\$90,860	
Traffic control	\$7,700	
531 cu. Metres remove spoil	\$29,205	
20% design, supervision and contingency	\$29,711	
Sub-total	\$178,266	
Leland Street		
430 metres kerb and gutter	\$42,570	Road works are scheduled for construction during 2005 and 2006, in conjunction with drainage works.
2600 sq. metres road pavement	\$200,200	
Traffic control	\$12,100	
1170 cu. Metres remove spoil	\$64,350	
20% design, supervision and contingency	\$63,844	
Sub-total	\$383,064	
Gordon Street		
370 metres kerb and gutter	\$36,630	Road works are scheduled for construction during 2005 and 2006, in conjunction with drainage works.
2255 sq. metres road pavement	\$173,635	
Traffic control	\$12,100	
1188 cu. Metres remove spoil	\$63,580	
20% design, supervision and contingency	\$57,189	
Sub -total	\$343,134	
Camden Street		
680 metres kerb and gutter	\$67,320	Road works are scheduled for construction during 2005 and 2006, in conjunction with drainage works.
4140 sq. metres road pavement	\$318,780	
Traffic control	\$19,800	
1863 cu. Metres remove spoil	\$102,465	
20% design, supervision and contingency	\$101,673	
Sub-total	\$610,038	
Works		Indicative Timeframe
Land Acquisition for Road Widening	\$222,500	

– Camden & Lugard		
Sub-total	\$1,737,002	
Less: Existing Contributions	<\$159,188>	
Total	\$1,577,814	

4.3 CALCULATION OF CONTRIBUTION RATES

Contributions will be charged as a rate per hectare based on the developable area (as defined in section 2.3 of this plan).

Development contribution rates are calculated exclusive of any taxes or charges payable on the transaction. If the transactions are, or become, liable for GST or any other tax or charge, the contribution payable will be increased accordingly.

Approximately 6.8 ha of land are available for development (developable area) in the Lambridge Industrial Estate North Penrith Area.

The contribution rate is calculated by dividing the total cost of the works to be provided by the available land area, to reach a contribution per hectare.

$$\frac{\text{Total cost of facilities}}{\text{Developable land available}} = \text{contribution rate / ha}$$

Works \$1,355,314	= \$198,325/ha of developable area
6.8338 ha	

Land \$222,500	= \$32,559/ha of developable area
6.8338 ha	

Note: The above contribution rates are applicable as at the date of adoption of this Plan. Contribution rates will be indexed in accordance with the Section 5.1 of this Plan.

5. CONTRIBUTION RATES CALCULATIONS

5.1 SETTING & INDEXATION OF CONTRIBUTION RATES

In order to provide sufficient funding to cover price rises between writing the plan and paying for the items to be delivered by the plan, it is necessary to index the amounts that will be contributed. Indexing applies from date of adoption until issue of consent (per 5.1). Clause 7.10 provides for the indexation of contributions after the issue of development consent.

The Section 94 contribution rates will be indexed based on:

- i) the Consumer Price Index (All Groups Sydney) or equivalent index system or a projection thereof, and
- ii) the appropriate interest rate for that portion of the plan that is loan funded, and
- iii) the land value index for that proportion of the plan that relates to land acquisition or equivalent index system or a projection thereof.

The indexation will be in accordance with this plan and the rates will be published in Council's Annual Management Plan in July each year listing the rates for the next 12-month period. The formulas automatically adjust in the first quarter of each management plan for any prior estimation errors. The method of establishing the contribution rate to be published in the Management Plan shall be to estimate the result that would be achieved by applying the following formulas on a quarterly basis.

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

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

5.1.1 General Contribution Rates

Except for those contribution rates which are required by section 5.1.2 and 5.1.3 to be adjusted by the methods specified in those sections, all rates found in section 8 will be adjusted as follows:

$$RC = AC \times CPI/ACPI$$

Where:

RC is the amended contribution rate

AC is the contribution rate at the adoption of the plan

CPI is the latest Consumer Price Index (All Groups Sydney)

ACPI is the Consumer Price Index (All Groups Sydney), which applied at the date of adoption of the plan

5.1.2 Contribution Rate Loan Funded

Where loan funds have been applied in the provision of works and services or land have been provided, the contribution rates in respect of the works, services or land will be reviewed in accordance with the following formula from the date the loan funds are drawn down and every quarter thereafter:

$$RC = PC \times (1+r)$$

Where:

RC is the amended contribution rate

PC is the contribution rate at the previous quarter

r is the interest rate applicable on the last day of the quarter of the

90-day bank bill swap rate plus 1% rate and then converting the annual rate to a quarterly rate by dividing by 4

5.1.3 Indexation of Contribution Rate for Land Acquisition

The contribution rate for land acquisition (as found in Section 12) will be amended, pursuant to clause 32(3)(b) of the Environmental Planning and Assessment Regulation 2000, in line with movements in the Index.

The revised contribution rate is:

$$RC = AC \times CV/VA$$

Where:

RC is the amended contribution rate for land acquisition

AC is the contribution rate for land acquisition as at the adoption date of this plan

CV is the Index current from time to time

VA is the Index at the adoption of this plan

For the purposes of this clause 5.1.3 'Index' means the index for established home prices: Sydney as published by the Australian Bureau of Statistics.

5.1.4 Amended Contribution Rates

The amended contribution rates shall replace the contribution rates as found in Section 8.

6. ADMINISTRATION LEVY

To monitor, review and implement the Section 94 Contributions Plan, Council must dedicate staff and resources to the task. This has resulted in the inclusion of an administrative component equivalent to 1% of the total works and facilities to be provided divided by the total developable area.

Contributions are based on the total cost of works and facilities for drainage and water quality and roads and traffic management divided by the total developable area. The administration levy is determined using the following formula:

$$\frac{(\$D + \$R)}{DA} \times 0.01 = \$A$$

Where:

\$D = total cost of works and facilities for drainage and water quality

\$R = total cost of works and facilities for roads and traffic management

DA = total developable area

\$A = contribution payable for administration.

$$\frac{(\$897,345 + \$1,577,814)}{6.8338 \text{ ha}} \times 0.01 = \$3,622$$

Total Contribution for Administration = \$3,622/ ha of Developable Area

7. PAYMENT METHODS AND TIMING

7.1 ISSUE OF CONSENT

Any development consent, which requires the payment of a Section 94 contribution, will include a condition stating the amount payable in monetary terms. Where a development proposal involves works 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.

Council will impose as a condition of consent, a requirement for the payment of a Section 94 Contribution in respect of an application for development which gives rise to the need for facilities or works to be funded.

7.2 METHOD OF PAYMENT

Payment of the contributions will be required prior to the release of the linen plan for subdivision developments or at lodgement of a construction certificate for other forms of development.

Payment may be made by any means acceptable to Council provided that if the payment is not cash or 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 that the funds are cleared.

7.3 WORKS IN KIND

Council's may accept the construction of amenities or services to offset the monetary contribution payable.

The works provided must be in accordance with the Schedules of Works embodied in this plan. The applicant will be required to provide full details of the work proposed to be undertaken for Council's consideration

7.4 CONDITIONS OF AGREEMENT

Documentation necessary for the verification of proposed credits will also be outlined in the consent and a reasonable time frame will be established in order to prevent any delay.

In addition, conditions of transfer, including restoration and maintenance arrangements, will be set out in the consent.

If a detailed design for works in kind has not been completed at the time of consent, which does not require amendment, the value and conditions will be outlined in the consent notice. The arrangements for this are discussed below.

7.5 VALUATION OF WORKS IN KIND

At the time of detailed design and documentation a cost estimate will be established. If this varies from the adopted Section 94 budget, steps will be taken to rectify the variation. Land which has not been redeveloped which benefits from the works in kind will be affected by any increase and will similarly be affected by any decrease.

Once an agreement has been reached between Council and the developer about the revised cost, the developer may undertake the works. The developer will remain liable for any cost overruns. Similarly, any economies in construction costs will flow to the developer, provided that the quality of the work is not diminished. No further verification of the cost of work will be necessary following the detailed design and estimation. However, a valuation will be required, as the work will form part of Council's asset register.

7.6 TRANSFER OF LAND

Where Council considers that land to be transferred is an integral part of a development proposal, or the land transfer is required because it contains works for the benefit of the community, Council can require the land to be transferred to Council.

7.7 CREDITS

Prior to work being commenced, which would result in a developer entering into a position of credit, Council approval will be required. This may occur in conjunction with development consent after assessment of likely Section 94 works.

Following satisfactory completion of any works and their valuation, the item will be acknowledged as a credit against Section 94 liabilities for the relevant section of the budget.

7.8 TIMING OF PAYMENT

A contribution is payable on every parcel of land to which a Development Application applies. If a contribution has already been paid under this plan, then no contribution is payable on that portion of the land already levied and paid.

Development Applications involving Subdivision Works

- Payment to be made prior to release of a Subdivision Certificate (linen plan).

Development Applications involving Building Works

- Payment to be made prior to the release of a Construction Certificate.

Complying Development Works

- Payment to be made prior to the issue of a Complying Development Certificate.

In the event that this plan is reviewed and new contribution rates are established, any payments not already due will become due on the day prior to the new rates being adopted. The developer may alternately request the contribution be recalculated under the new rates.

7.9 TIMING OF WORKS

The rate of receipt of income from Section 94 Contributions is dependent on the rate of development, which is difficult to precisely predict. This plan aims to provide works within a reasonable period of time in accordance with the indicative timeframes for the provision of works as outlined in the tables included in Sections 3.2 and 4.2 of this plan. Nothing in this plan binds the Council to have to provide any works or material public benefit the subject of this plan in advance of receipt of sufficient funds through the contributions that have been made under this plan.

7.10 INDEXATION OF CONTRIBUTIONS AFTER ISSUE OF CONSENT

The contributions payable are stated in the development consent. The Council shall be entitled on the condition of consent to require the contribution payable to be increased by an amount in accordance with the following formula:

$$\text{NCP} = \text{CP} \times \frac{\text{CPI (at the date of calculation)}}{\text{CPI (at the date the consent was approved)}}$$

Where:

NCP = New contribution payable

CP = Contribution payable in the consent

CPI = Consumer Price Index (All Groups Sydney) or the Index for
Established Home Prices: Sydney as published by the ABS

The NCP shall become the contribution payable under the development consent.

7.11 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.

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 period may be extended in circumstances acceptable to Council.

Interest and an administrative fee will be charged on deferred contributions.
The amount of the Bank Guarantee will be calculated in the following manner:

G = C + C (I x P), 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;

P is the period covered by the guarantee.

The guarantee will be terminated when the liability is met by the payment of cash or transfer of land or works.

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

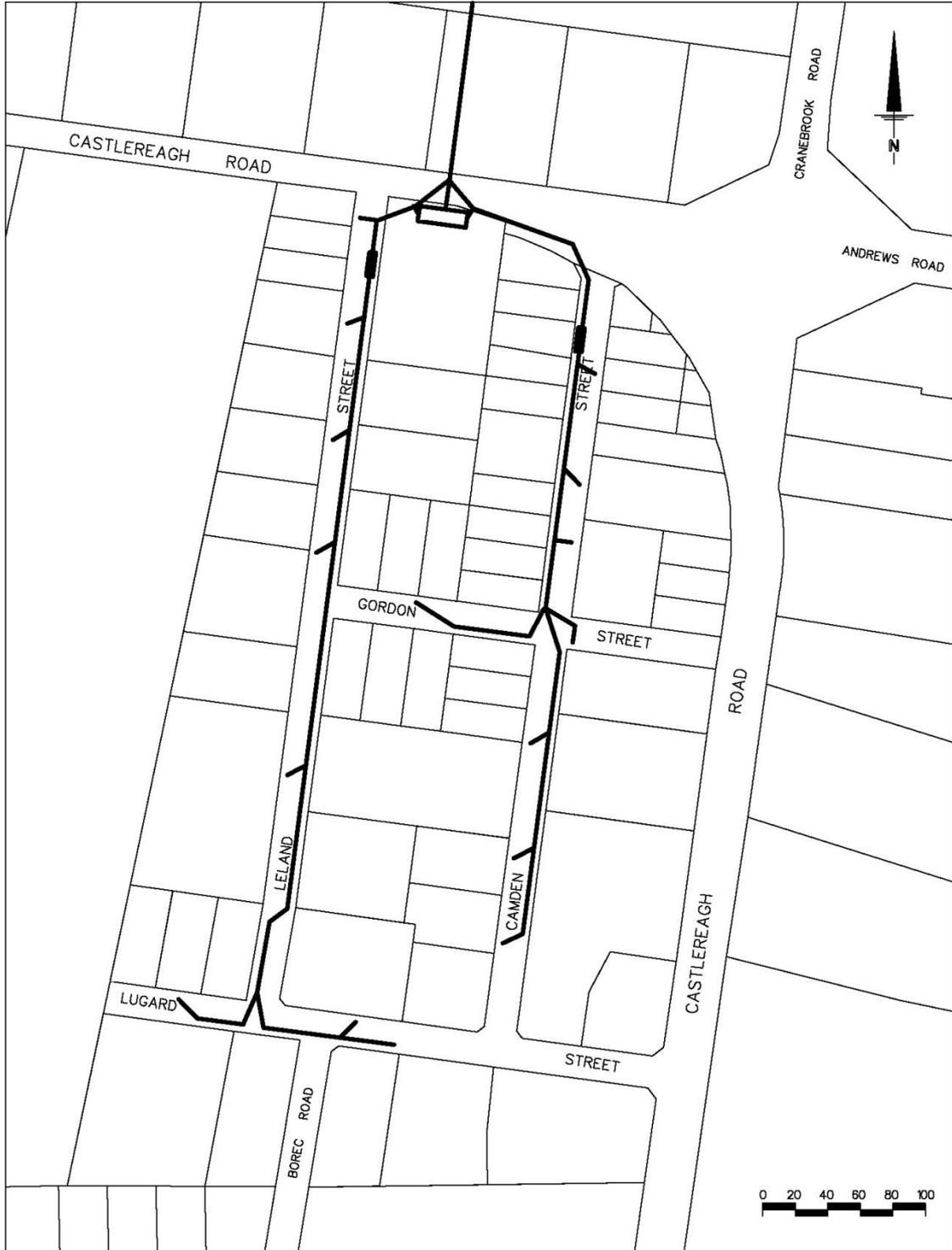
If contributions are not paid by the due date the Bank Guarantee will be called up by Council.

8. CONTRIBUTIONS RATE SUMMARY

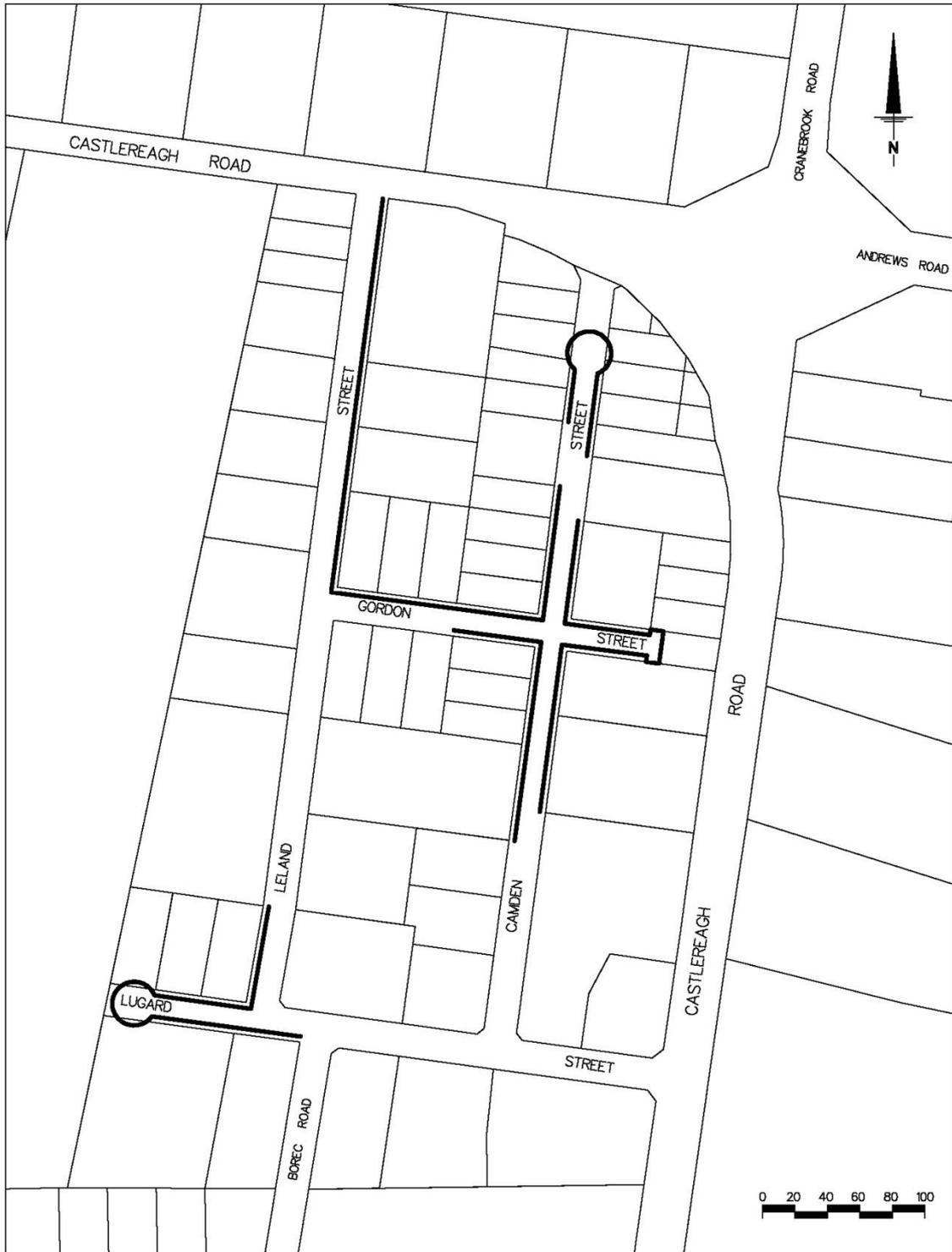
WORKS / FACILITY TYPE	CATCHMENT	ITEMS	CONTRIBUTION RATE PER DEVELOPABLE HECTARE
1. Drainage and Water Quality		3.2	\$131,310
2. Roads and Traffic Management	Lugard Street	4.2 Works Land	\$198,325 \$32,559
	Leland Street	4.2 Works Land	\$198,325 \$32,559
	Gordon Street	4.2 Works Land	\$198,325 \$32,559
	Camden Street	4.2 Works Land	\$198,325 \$32,559
3. Plan Administration	1% of Total Works and Facilities / Developable Area	6	\$3,622

APPENDIX 1 – MAPS

MAP 1 – FUNDED DRAINAGE WORKS



MAP 2 – FUNDED TRAFFIC FACILITIES



MAP 3 – DEVELOPABLE AREA

