
7 S94A DEVELOPMENT CONTRIBUTIONS PLAN

Report prepared by: Development Contributions Coordinator
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REPORT SUMMARY

This report represents the culmination of research and analysis prompted by Council's Land Use Program of 2012 that identified the need to review the S94 Development Contributions Plan 2007.

In accordance with Council's resolution of 24 September 2013, a S94A Development Contributions Plan Business Case and draft S94A Plan have been prepared with the assistance of SGS Economics and Planning and Lindsay Taylor Law. The Business Plan is structured upon the S94A levy percentages and payment thresholds integral to Option 2C, Council's preferred Plan.

The Business Plan is founded upon a comparison of the cost of works that Council wishes to fund in the ten years from 2015 to 2025 and the S94A contributions it may expect to receive from developers in that same period. This illustrates a shortfall in funding, which supports the proposition that Ryde is justified in seeking permission to levy percentage charges upon development ranging from 1% to 3% and 4%, dependent upon location. These levies exceed the overall control of a maximum of 1% stipulated in the Environment and Planning Assessment Act Regulations and Council is applying to be granted exemption from the regulatory standards. Council is also seeking a dispensation in the application of S94A payment thresholds commencing at \$350,000 in contrast to the regulated threshold of \$100,000.

It is anticipated that S94A levy precedents established by the Minister for Planning for the neighbouring Councils of Parramatta, Burwood and Willoughby will assist Ryde's submission.

An extensively detailed Work Schedule has been prepared representing the interests of all key infrastructure, services and amenity stakeholders within Council. The Schedule has been structured to identify funding required by year and by location. This provides unparalleled transparency of intent and a valuable and simple tool with which to reassess priorities of the annual Delivery Plan. The S94A regulations permit the Work Schedule to be reassessed in this way. It provides a far more flexible approach than S94, which restricts the allocation of funds to projects identified when the Plan was made. Currently Council is restricted to allocating S94 funds tasks identified in the S94 Work Schedule of 2007. The S94A Work Schedule is supportive of a host of Ryde and Sydney Regional Plans and Strategies endorsed by Council and Government.

Subject to Council approval of the S94A Development Contributions Plan Business Case and draft S94A Plan, in-principle support of the levy of 4% for Macquarie Park and 3% for the other Town Centres will be sought from the Department of Planning and Environment.

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Once in-principle approval has been received it is intended to exhibit the S94A Development Contributions Plan Business Case and draft S94A Plan, the outcome of which will be advised to Council. Both documents would then be submitted to the Minister for Planning.

Submission of the S94A Plan to the Minister is not without risks from a delayed response, modifications of the levy percentages or thresholds and outright rejection of any deviation from regulatory standards. In any eventuality it is known that some further professional assistance will be required from SGS Economics and Planning /Lindsay Taylor Law and, in the event that the Minister's decision prompts significant reworking of the Plan, a contingency fee of \$36,844 including GST is proposed. This requires funding approval.

The change from a S94 to a 94A development contributions model is beneficial to both Ryde and developers in the LGA. The S94A Business Plan and S94A Plan are in accordance with Council's declared intent and Council is requested to respond to the following recommendations.

RECOMMENDATION:

- a) That Council endorses the S94A Development Contributions Business Plan as provided by SGS Economics and Planning /Lindsay Taylor Law and the Plan is submitted to the Minister for Planning
- b) That Council endorses the draft S94A Plan for public exhibition undertaken in accordance with the Environmental Planning and Assessment Act 1979.
- c) That Council provides to the Acting General Manager delegated authority to amend the draft S94A Plan, if required by the Minister for Planning following her consideration and assessment of the S94A Development Contributions Business Plan.
- d) That Council allocates an amount of \$36,844 including GST from the S94 Plan Administration Reserve for the purpose of funding further services from SGS Economics and Planning /Lindsay Taylor Law to assist in finalising the S94A Plan and its implementation, subject to the extent of work required to comply with the Minister's direction.

ATTACHMENTS

- 1 Business Case S94A - CIRCULATED UNDER SEPARATE COVER
- 2 Draft Contributions Plan S94A - CIRCULATED UNDER SEPARATE COVER

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ITEM 7 (continued)**Background**

This matter was initially reported in detail to Council on 24 September 2013. At this meeting Council resolved:

- That Council endorses a Section 94A variable rate development contributions plan based upon Option 2C with the lowest contribution threshold set at \$350,000.
- That Council delegates authority to the Acting General Manager to renegotiate and extend the appointment of SGS Economics and Planning and Lindsay Taylor Law (SGS/LTL) to carry out Phases 2 and 3 of the Contribution Plan project.
- That Council allocates the amount of \$130,000 from the S94 Plan Administration reserve for the purpose of preparing and implementing a S94A development contributions plan for the City of Ryde.
- That Council endorses the preparation of a new draft S94A variable rate development contributions plan.

This followed a Councillor Workshop on 16 July 2013 in which Councillors confirmed their support to move forward with a S94A Contributions Plan Report, as originally foreshadowed in the Land Use Program of Council's Delivery Plan for 2012-2016.

The report presented to Council on 24 September 2013 explained that Council's current Section 94 Development Contributions Plan, which became effective on 19 December 2007, was due for review. Council was advised that NSW legislation had been amended since 2007 and an option to levy development contributions under Section 94A existed. This type of plan was explained as being simpler to administer than S94 and easier for developers to understand. Council was also informed S94A provides greater flexibility in the expenditure of funds and removes the nexus issue limiting how funds can be spent. In clarifying the method of calculating S94A levies, Council was advised that S94A contributions are based upon the cost of the development rather than the number of bedrooms to be provided, or whether the development was for commercial, retail or industrial purposes as is the case with S94.

However, as S94A levies are limited under the Environmental Planning and Assessment Regulation 2000, Council was advised that a business case would be required to be submitted to the Department of Planning and Environment (as it is now named) seeking dispensation to levy higher rates for development. Precedents for higher rates existed in the legislation and had been granted to Parramatta, Willoughby, Burwood and Gosford.

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SGS Economics and Planning, with assistance from Lindsay Taylor Law, had researched the expected growth of population and development in Ryde and investigated six contribution models to compare with Council's existing S94 Plan. Detailed information was provided in support of this research. Council agreed that Option 2C was the preferred option, which provides a city-wide plan with variation to rates for Macquarie Park (4%), Town Centres (3%), the remainder of Ryde at 1% with levies applying only when the cost of development exceeds \$350,000. Option 2C was predicted to produce \$233.2M in the study period thereby outperforming the S94 Plan's projected income of \$247.M of which only \$198.3M. was judged to be certain as S94 is open to challenge by developers.

Discussion

The S94 Development Contributions Plan 2007 divided the Ryde Local Government Area into two sections by applying one set of charges to all development outside of Macquarie Park and a higher set of charges to development inside Macquarie Park. This recognised the intent, in 2007, to produce higher standards of infrastructure in the Macquarie Park Corridor above the rest of Ryde. However, through the maturing of Ryde's Local Environment Plans and Development Control Plans over time, those standards have migrated in part to the other Town Centres in Ryde.

As Council had endorsed pursuit of Option 2C for its S94A Plan, it became critical to reconsider the infrastructure that Council would propose to provide through S94A funding in Macquarie Park, Eastwood, West Ryde, Meadowbank, Ryde Town Centre and Gladesville. Option 2C is based upon a 4% levy on development works in Macquarie Park, 3% in the Town Centres and 1% in the rest of Ryde. The application of the \$350,000 threshold ensures that any works in any location that cost less than this are excluded from the S94A levy. In seeking to justify the S94A Plan to the Minister it became imperative to identify the works required to be funded by S94A to support the claim for an increase in the percentage levies above the 1% rate embedded in legislation.

This necessitated reconsidering Council's 2014 – 2018 Four Year Delivery Plan and forecasting what other works would be required in the S94A proposed plan period of 2015 – 2025. The issue with the annual Delivery Plan was that the forecast funding requirements utilised funds available from a variety of sources available to Council; general revenue, special reserves, investment funds and S94 reserves. In the case of S94 reserves that funding could only be allocated (in compliance with Environment and Planning Act Regulations) if the works proposed had been specified in the 2007 S94 Contribution Plan Work Schedules.

To establish the S94A Work Schedule the works programmed for 2014 – 2018 also had to be dissected by geographical location, further works forecast from 2018 to 2025 by location, and confirmation received of which works could be funded by S94A contributions. Lindsay Taylor, the Principal of Lindsay Taylor Law, a specialist in planning regulations and development contribution documentation, provided guidance on regulatory compliance.

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The content of the S94A Works Schedule 2015 – 2025 took a considerable time to develop. As an aspirational document illustrating what infrastructure provision and improvement Council wished to achieve in each part of Ryde, wide ranging input was received from the Executive Team and detailed projections from Service Unit Managers in Public Works, Community Life and Environment and Planning. The final Work Schedule lists 71 tasks to provide infrastructure, services and amenities across the whole of Ryde.

S94A Work Schedule - Summary 2015-2025

	Activity	Totals	Macquarie	Eastwood	West Ryde	Meadowbank	Ryde	Gladesville	Outside Centres
1	Roads - Acquisition, Construction & Renewal	\$178,830,816	\$130,736,619	\$323,526	\$291,099	\$515,365	\$424,207	\$320,682	\$46,219,319
2	Stormwater and Flood Mitigation	\$71,405,418	\$7,236,354	\$40,536,887	\$3,618,177	\$9,010,000	\$3,618,177	\$1,817,645	\$5,568,177
3	Pathways Expansion & Construction	\$17,077,493	\$2,300,543	\$1,509,818	\$370,682	\$593,091	\$741,363	\$591,545	\$10,970,451
4	Traffic & Transport Works & Services	\$34,294,424	\$22,347,021	\$4,022,850	\$909,401	\$921,785	\$929,358	\$905,575	\$4,258,435
5	Community Buildings, Facilities & Public Art	\$86,245,575	\$27,311,215	\$3,013,986	\$6,149,982	\$197,500	\$42,972,200	\$1,183,816	\$5,416,877
6	Sportsfields, Acquisition, Facilities & Renewals	\$76,029,796	\$10,218,750	\$960,000	\$587,500	\$0	\$1,350,000	\$0	\$62,913,546
7	Open Space, Planting, Management & Signage	\$19,015,500	\$1,065,000	\$442,500	\$386,250	\$946,250	\$386,250	\$348,750	\$15,440,500
8	Parking Provision	\$23,441,109	\$1,677,067	\$15,173,287	\$6,906	\$11,049	\$13,812	\$5,180,525	\$1,378,464
9	Public Domain, Provision, Renewal and Heritage	\$16,851,291	\$4,547,750	\$4,085,000	\$2,525,000	\$25,000	\$2,615,000	\$1,355,000	\$1,698,541
	Totals	\$523,191,422	\$207,440,318	\$70,067,853	\$14,844,997	\$12,220,039	\$53,050,367	\$11,703,538	\$153,864,310

The funding requirement across the LGA divides as:

Macquarie Park	39.6%
Eastwood	13.4%
West Ryde	2.8%
Meadowbank	2.3%
Ryde	10.1%
Gladesville	2.2%
Rest of Ryde	29.4%

It is clear that Macquarie Park will absorb the largest percentage of funds to achieve Council's outcomes, which reflect the development activity in that precinct. It also indicates that in Town Centres with less development activity there is still a demand for Council to fund significant work. The largest costs in the Town Centres are:

Eastwood	stormwater works (\$40M), parking provision (\$15M)
West Ryde	community facilities (\$6M), stormwater works (\$3M)
Meadowbank	stormwater works (\$9M)

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Ryde	community facilities (\$43M)
Gladesville	parking provision (\$5M)
Rest of Ryde	sports fields (\$63M), road works (\$46M)

The Work Schedule items, being infrastructure, services and amenities, are guided by Council's projections of growth in dwellings and employment, and in accordance with its own Strategies and Plans, including:

Ryde Local Planning Study
Ryde 2021 Community Strategic Plan
Four Year Delivery Plan
Draft Asset Management Plan
Long Term Financial Plan
Community Facilities Plan
Integrated Open Space Plan
Integrated Transport and Land Use Strategy
Ryde Bicycle Strategy and Masterplan

In further support of the case for S94A Plan, Regional Strategies place Ryde and particularly Macquarie Park in a regional context:

Metropolitan Plan for Sydney
Draft Inner North Sub-regional Strategy
Draft Metropolitan Strategy, and the
Urban Activation Precincts Program

The Business Case for the Ryde S94A Plan (**ATTACHMENT A – CIRCULATED UNDER SEPARATE COVER**), provides the justification for Council's S94A Plan to the Minister for Planning. The main focus of the Plan is the analysis of the preferred development contribution plan option, one of 8 studied, and how that proposed S94A Plan, Option 2C, provides funding relative to the expected population and employment growth and cost of Council's works for the term of the Plan.

The S94A Draft Development Contributions Plan (**ATTACHMENT B – CIRCULATED UNDER SEPARATE COVER**) would be implemented only after, and subject to:

- In-principle approval by the Department of Planning and Environment of the case for levies varying from 1%, to 3% and 4% according to location,
- Public exhibition of the S94A Plan and the S94A Business Case and subsequent review by Council, and
- The decision of the Minister of Planning

During the period of public exhibition, notified by newspaper and Council's website, the S94A Draft Development Contributions Plan would be published on Council's website with an explanation of the change from S94 and answers to anticipated "frequently asked questions".

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There has been some concern in Council about the effect of the proposed \$350,000 development cost threshold for "mum and dad" developers. The S94A Draft Development Contributions Plan explains the application of the levies as a percentage of the cost of development. Guidance for developers in this regard is given in item "1.15 Procedure" in the Plan. Appendix C of the Plan provides the forms from section 25J of the Environmental Planning and Assessment Act Regulations to show how cost must be provided to Council for developments above and below a \$500,000 demarcation. Developers must complete these forms and submit them to Council. It is important to note that section 25J of the Regulations excludes from "development cost" items such as value of land, cost of finance, project management fees and accessibility needs for the disabled. The costs of development of affordable housing and adaptive reuse of a heritage item are also excluded.

With regard to the \$350,000 threshold, the following comparison illustrates the differences between Council's existing S94 Plan and the proposed S94A Plan for a private residential detached development outside a Town Centre.

Case: Owner adds a 1 bed Granny Flat (cost \$95,000) next to home:

S94 charge	\$6,911.25
S94A charge	\$0

Case: Owner replaces 3 bed home with 4 bed home (cost \$349,000):

S94 charge	\$0
S94A charge	\$0

Case: Owner replaces 3 bed home with 5 bed home (cost \$430,000):

S94 charge	\$0
S94A charge	\$2,150

Case: Owner replaces 3 bed home with 6 bed home (cost \$800,000):

S94 charge	\$0
S94A charge	\$8,000

Case: A dual occupancy is created, a 4 bed home replaced by two 4 bed dwellings (cost \$970,000):

S94 charge	\$20,000
S94A charge	\$9,700

These examples illustrate that there can be a charge for private domestic development where one does not currently exist, but at its highest proposed levy of 1% outside Town Centres it does not represent a significant burden. The first and last examples show that the increasingly common activities of adding a secondary dwelling to an existing home site or creating a dual occupancy will become more economic.

ITEM 7 (continued)**Consultation**

This matter was discussed with Councillors on 16 July 2013 and reported to Council on 24 September 2013. A Councillor Workshop was held on 26 August 2014 to update Councillors on progress of the business case for the S94A and gain approval for the submission of this report.

Detailed discussions of the S94A Plan were held with the Executive Team of Council 12 February and 18 June 2014 attended by SGS/LTL. Throughout April, May and June 2014 input to the 2015 – 2025 Works schedule was coordinated at Group Manager and Service Unit Manager levels across Public Works, Community Life and Environment and Planning.

External consultation was maintained continuously with SGS Economics and Planning, and with Lindsay Taylor Law as needed.

On 31 July 2014, senior staff from Environment and Planning, with SGS Economics and Planning, met with representatives of Growth Infrastructure Funding in the Department of Planning and Environment to discuss Council's intent to change its development contributions model from S94 to S94A. This meeting also served to gain an understanding of the evaluation process in the Department. Whilst the Department was not averse to Council submitting its proposal to the Minister for approval in the October/November timeframe, it was hesitant to confirm this and suggested that IPART may be appointed to review the submission. On 25 August 2014 Council was able to quote to the Department S94A Plan submissions from other Councils that were not required to be vetted by IPART. Shortly following Council's letter the Department confirmed that referral to IPART would not be necessary.

Financial Implications

The financial analysis of the S94A Plan has been reworked in light of the detailed funding requirements identified in the 2015 – 2025 Work Schedule. The analysis is based upon the comparison between the development contributions expected to be received and the funding required by Council to complete the tasks in the Work Schedule. Refer to **ATTACHMENT A – CIRCULATED UNDER SEPARATE COVER**, "*Analysis of the Preferred Option*" which provides details illustrating that there is a funding shortfall of \$274M between income and expenditure over the period of the Work Schedule. This shortfall is made up from \$9M in Macquarie Park, \$121M across the other Town Centres, and \$144 in the rest of Ryde. This outcome provides support to Council's case for S94A levies greater than 1% as set by the Regulations.

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The S94A levies being sought do not necessarily provide a greater income than s94 charges on individual developments. They do however have a positive overall impact on development feasibility, thereby encouraging development in Ryde. This in turn will increase Council's rate returns. Due to the flexibility permitted in the use of S94A funds and the simpler process in comparison to S94, Council will also realise other benefits:

- Infrastructure, services and amenity projects will not need to be funded out of General Revenue,
- The control and processing of S94A contributions is expect to be easier for customers to understand and staff to operate, providing a more user-friendly application that should reduce administration costs.
- The Regulations do not permit challenges to a S94A development contributions plan. This would save Council much time it currently expends in handling challenges to its S94 Plan, which the Regulations do permit.

The original S94A implementation program has been extended due to:

- Studies to identify further S94A options in 2013
- Referrals to Lindsay Taylor Law to clarify questions raised by the Executive Team of Council
- Production of draft VPA Policy (on hold pending S94A Plan final form)
- Meetings with Department of Planning & Environment
- Production of S94A Work Schedule 2015-2025

Therefore the Project Brief components of public exhibition, subsequent report to Council and submission of the Plan to the State authority for approval remain outstanding.

Although Council will be dependent upon receiving in-principle approval of the 4% and 3% levies proposed in the S94A Business Case and Plan from the Department of Planning and Environment, the program anticipates being able to submit the S94A Plan to the Minister at the end of this year.

The original budget for this project was \$150,000, later increased by \$130,000 by Council Resolution on 24 September 2013. Expenditure to date has reached \$268,582 leaving a balance of \$11,418, insufficient to complete this project. The 2012 program for the project anticipated completion in October 2013, however the volume of work both for SGs/LTL and Council was under-estimated (e.g. planning law referrals and determination of the S94A Work Schedule).

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The limit of the current Purchase Order with SGS Economics and Planning and Lindsay Taylor Law (SGS/LTL) has been reached due to the additional work that has had to be completed during the project to date. SGS/LTL has considered the tasks required if the S94A Plan is endorsed as proposed, and those tasks that may be required if the Minister's decision results in a major restructuring of the Plan. A fee estimate \$36,844 including GST has been provided by SGS/LTL to cover both contingences, including:

- Preparation of a new S94A Plan
- Revised S94A Business Case
- New Voluntary Planning Policy and procedure, and
- Implementation of the new S94A Plan.

In conclusion, the Financial Impact is:

- Additional funding of \$36,844 for professional assistance to finalise implementation of the Plan and as contingency against a major rework subsequent to the Minister's decision.

Risks

The meeting with the Department of Planning and Environment on 31 July 2014 did not elicit conclusive support or criticism of Council's S94A proposal. It was clear however that a submission for a change from S94 to S94A Plan and an amendment to the 1% levy had not been received by the Department in recent times and that a documented process for handling such submissions did not exist.

It is not possible to predict the Department's response to the submission but five risks can be identified:

- **Timing:** the Department may not be able to process the submission in 2014. It may be delayed due to the Department's need to focus on other matters in early 2015. Council will have its S94 Plan to fall back upon but long delays could jeopardise the delivery of tasks listed in the revised Work Schedule.
- **Threshold:** the Department may decline to accept Council's proposal for a \$350,000 threshold at which levies would commence. If the threshold were reduced (e.g. to \$200,000), Council would receive a slightly increased income but charges would impact the low cost developments.
- **Levy, Macquarie Park:** despite precedents established in other Councils and the importance of Macquarie Park locally and regionally, the Department may not approve the 4% levy. This would reduce Council's ability to fulfil its targets.

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- Levies, Town Centres: the Minister may not approve any levy of 3% for the Town Centres. Precedents for higher percentages elsewhere have been for core areas (e.g. Parramatta CBD), not in the town centres of suburbs within LGA areas. If the Town Centres were limited to 1%, Council's prospective income would be reduced.
- Plan parameters: if the Minister wholly rejected the S94A Plan and confined Council to a levy of 1% and a threshold of \$100,000 in accordance with the Regulation's standards, Council may wish to consider remaining with its existing S94 Plan structure.

Options

The options for Council are as follows:

- **Do not proceed with submitting the S94A Development Contributions Business Case to the Minister for Planning.** This is not recommended. Council identified the need to review its S94 Plan in 2012 and this matter has been actively pursued since the middle of 2013. Council now has information explaining the potential benefits of S94A and a comprehensive Work Schedule for the period 2015 – 2025, containing many works which cannot be funded by its present S94 Plan or the proposed S94 Interim Plan.
- **Change the choice of S94A option to be submitted to the Minister.** This is not recommended. The submission material is founded upon Option 2C as resolved by Council on 24 September 2013. Remodelling the Business Case would delay submission and risk Ministerial evaluation clashing with the State Election and any subsequent reorganisation of the Department of Planning and Environment that may follow.
- **Proceed with submitting the S94A Development Contributions Business Case as proposed.** This is the recommended course of action. It fulfils the previous resolutions of Council and provides a new flexible and user-friendly mechanism for levying development contributions. It identifies how received funds may be applied across a broad spectrum of infrastructure, services and amenity projects throughout the LGA, benefitting all residents, workers and visitors to Ryde in due course.