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**Blacktown**City Council

**SECTION 94 CONTRIBUTIONS PLAN  
NO. 13  
-New Tribes Mission –Open Space-**

In force from 7th November 2001

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# CONTENTS

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<b>1</b>	<b>INTRODUCTION .....</b>	<b>1</b>
1.1	PURPOSE OF PLAN .....	1
1.2	PRINCIPLES OF SECTION 94 .....	1
1.3	AIMS AND OBJECTIVES.....	2
1.4	LAND TO WHICH THE PLAN APPLIES .....	3
1.5	DEVELOPMENT TO WHICH THE PLAN APPLIES .....	4
1.6	RELATIONSHIP TO OTHER PLANS .....	4
1.7	THE MONITORING AND REVIEW OF THIS PLAN.....	4
1.8	TIMING OF PROVISION OF ITEMS.....	4
1.9	FINANCIAL INFORMATION .....	4
1.10	ENQUIRIES REGARDING THIS PLAN.....	5
<b>2</b>	<b>PROVISION OF OPEN SPACE.....</b>	<b>6</b>
2.1	INTRODUCTION.....	6
2.2	NEXUS.....	6
2.3	CONTRIBUTION CATCHMENTS.....	6
<b>3</b>	<b>DETERMINATION OF CONTRIBUTION RATES.....</b>	<b>7</b>
3.1	CONTRIBUTION FORMULA.....	7
3.2	EXPLANATION OF THE ADMINISTRATIVE COMPONENT.....	8
3.3	INDEXATION.....	8
3.4	BASE CONTRIBUTION RATE.....	8
<b>4</b>	<b>EXPLANATION OF CONTRIBUTION FORMULA COMPONENTS .....</b>	<b>9</b>
4.1	EXPLANATION OF THE LAND COMPONENTS.....	9
4.2	EXPLANATION OF THE CAPITAL COMPONENTS.....	10
4.3	EXPLANATION OF THE CATCHMENT AREA .....	10
4.4	ASSUMED OCCUPANCY RATES.....	10
<b>5</b>	<b>PAYMENT OF CONTRIBUTIONS .....</b>	<b>11</b>
5.1	METHODS OF PAYMENT .....	11
5.2	TIMING OF PAYMENT.....	12
5.3	CREDITS FOR EXISTING DEVELOPMENT .....	12
5.4	INDEXATION AND REVIEW OF CONTRIBUTIONS .....	13
5.5	DISCOUNTING OF CONTRIBUTIONS .....	13
5.6	DEFERRED PAYMENT OF CONTRIBUTIONS.....	13

# LIST OF APPENDICES

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**APPENDIX "A"** .....Schedules of Works.  
**APPENDIX "B"** ..... Schedule of Values in the Contributions Formulae.  
**APPENDIX "C"** .....Base Contribution Rates.

# 1 Introduction

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## 1.1 Purpose of Plan

This Contributions Plan (C.P.) outlines Council's policy regarding the application of Section 94 (S.94) of the Environmental Planning and Assessment Act, 1979 to the provision of Open Space in the New Tribes Mission Site.

This C.P. has been prepared in accordance with the Environmental Planning and Assessment Act, 1979 (the Act) and the Environmental Planning and Assessment Regulation, (the regulation) 1980.

This Contributions Plan was approved by Council on 24<sup>th</sup> October 2001 and came into force on the 7<sup>th</sup> November 2001.

The S.94 contributions the subject of this Plan have been determined on the basis of a "Contribution Catchment". This is the area over which a contribution for a particular item is levied. Within the catchment there is an identifiable "list" of works, which are planned to ultimately be provided.

Council applies a contribution formula to the catchment for the purpose of calculating the contribution rate applicable to that catchment. The formula takes into account the cost of works to be undertaken, the cost to Council of acquiring land on which to undertake these works and the total population of the catchment area. The total cost of providing the works is distributed over the total population of the catchment on an equitable basis.

## 1.2 Principles of Section 94

S.94 permits Councils to require persons developing land to pay monetary contributions and/or dedicate land in order to help fund the increased demand for public amenities and public services (amenities and services) generated by the carrying out of their developments. The Land & Environment Court has determined that S.94 is the sole method that Councils can use to require a contribution from a person developing land. The three general principles in applying S.94 contributions are:

- A contribution must be for, or relate to, a planning purpose;
- A contribution must fairly and reasonably relate to the subject development; and
- The contribution must be such that a reasonable planning authority, duly appreciating its statutory duties, could have properly imposed.

Council may either:

- Require a contribution (or dedication of land) to fund amenities and services to be carried out in the future; or
- Require a contribution to fund amenities and services, which have already been constructed.

The latter category is referred to as **retrospective funding**.

One of the fundamental responsibilities of any Council in imposing S.94 contributions is to ensure that the contributions levied are **reasonable**. That is, the works and facilities to be provided must be as a direct consequence of the development on which the contributions are levied. In keeping with this responsibility, S.94 contributions levied on development as a result of this Plan are limited to providing local open space to the minimum level necessary to sustain an acceptable form of urban development.

## 1.3 Aims and Objectives

The aims and objectives of this Plan are to:

- Ensure that the Section 94 contributions levied on development within the New Tribes Mission Site are reasonable.
- Ensure that the method of levying Section 94 contributions is practical.
- Ensure that an appropriate level of infrastructure provision occurs within the New Tribes Mission Site.
- Employ a user pays policy for the funding of open space land and embellishment within the New Tribes Mission Site.
- Ensure open space is provided in an orderly manner.
- Make clear Council's intentions regarding the location and timing of open space provision within the New Tribes Mission Site.

## 1.4 Land to Which the Plan Applies

The boundaries of the specific contribution catchments are shown below



## **1.5 Development to which the Plan Applies**

The Plan applies to all developments occurring within the catchment area that require the submission of a development application to Council, including the intensification of use of a site, involving expansion of area occupied by a development and/or the addition of population.

## **1.6 Relationship to Other Plans**

Other planning controls apply to the areas subject to this Plan. These include:

- Blacktown Local Environmental Plan 1988; (LEP Amendment No. 156.)
- Blacktown Development Control Plan 1992; and
- Contributions Plan No. 1 - 1980's Release Areas
- Contributions Plan No. 10 - Tree Planting on Nature Strips

## **1.7 The Monitoring and Review of this Plan**

This C.P. will be subject to regular review by Council. The purpose of any review is to ensure that:

- Contribution levels reflect the actual cost of land and embellishment of the Open Space.

Any changes to the C.P. must be prepared in accordance with the Act and the Regulation and placed on public exhibition for a period of 28 days. The nature of any changes proposed and the reasons for such will be clearly outlined as part of the public participation process.

Council welcomes the comments of interested parties on this C.P. at any time.

## **1.8 Timing of Provision of Items**

Due to the nature of the development it is envisaged that the embellishment works will be undertaken concurrently with the residential development.

## **1.9 Financial Information**

A separate annual statement is prepared by Council following the end of each financial year. This accounting record contains details of total contributions received, total contributions expended and total interest earned for each plan and is available for inspection free of charge from Council's Corporate Finance Section.

## **1.10 Enquiries regarding this Plan**

Enquiries in relation to this or any other Contributions Plan can be made either by phoning Council's Information Centre on 9839 6000 between 8.30 am and 4.30 pm Monday to Friday or by visiting the Information Centre on the Ground Floor of the Civic Centre in Flushcombe Road, Blacktown between 8.30 am to 4.30 pm Monday to Friday. A copy of the Contributions Register is also available for inspection free of charge at this counter. As this register is on Council's mainframe computer and spans many years, persons wishing to view the whole register (rather than details in relation to a particular property) will need to contact Council's Developer Contributions Co-ordinator or Section 94 Officer in advance to ensure suitable arrangements can be made to view this information.

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## 2 Provision Of Open Space

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### 2.1 Introduction

The provision of active and or passive open space benefits the community in a number of ways. Open space provides the venue for many cultural and social activities and the various types of open space facilities typically provided by Local Councils cater for the differing needs of most members of the community. In addition, open spaces aesthetically enhance the amenity of urban areas and provide "breathing spaces" within the built environment. As it is generally accepted that every person generates a need for some form of open space, the provision of adequate open space is expected by the community and has always been an integral component of urban planning.

### 2.2 Nexus

A nexus can be drawn between the increased development anticipated on the land subject to the C.P. and the need to provide active and or passive open space.

This plan seeks to provide for the 'passive open space' needs of the new residents in the New Tribes Mission Site. Although these residents also contribute to the need for "active open space" within the Plumpton/Rooty Hill/ Minchinbury Open Space Catchment, sufficient provision for these active open space' needs is made within Contributions Plan No. 1. This is because the thresholds for Active open space have not been exceeded with the addition of this development to the catchment.

This development does generate the need for additional 'passive open space'. Passive open space in the form of 'pocket parks' have lower thresholds and need to be positioned within suitable walking distances of the new residential population. This is the type of open space that this Contributions Plan is providing.

The New Tribes Site is not subject to the Open Space contribution levied under Contributions Plan No. 1.

### 2.3 Contribution Catchments

In order to determine actual provision levels and, ultimately, contribution rates, the potential population of the open space contribution catchment has been calculated. The potential population is the number of people the cost of providing the open space has been distributed over and is explained further in Section 4.3.

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## 3 Determination of Contribution Rates

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### 3.1 Contribution Formula

The following formula is used to calculate the embellishment contribution rate for Open Space:

$$\text{EMBELLISHMENT CONTRIBUTION RATE} = \frac{(\text{C1} + \text{C2}) + \text{B}}{\text{N}}$$

(\$/PERSON)

WHERE:

C1 = The actual cost to Council to date of open space embellishments adjusted to current day values using the Consumer Price Index (CPI).

C2 = The estimated cost of future open space embellishments.

N = The estimated total no. of persons in the contribution catchment.

B = The administrative component. This is 2% of the total cost of providing the open space.

The following formula is used to calculate the land contribution rate for Open Space:

$$\text{LAND CONTRIBUTION RATE} = 28.3 \times \frac{(\text{L1} + \text{L2})}{\text{N}} + \text{B}$$

(\$/PERSON)

L1 = The actual cost to Council to date of land acquired for open space purposes adjusted to current day values by using the Consumer Price Index (CPI).

L2 = The estimated cost of land yet to be acquired for open space purposes.

N = The estimated total amount of open space required for 74 lots based on 28.3 sq.m per person.  $N = (74 \times 3.5 \times 28.3 = 7329)$

B = The administrative component. This is 2% of the total cost of providing the open space.

*An alternative formula which provides the same contribution rate is; estimated land cost / expected population x 1.02.*

A more detailed explanation of the components in the contribution formula is provided in Section 4. A schedule of works is provided in Appendix "A".

The values of the components of the contribution formula are contained in the Schedule being Appendix "B".

## **3.2 Explanation of the Administrative Component**

The administration of S.94 is an expensive task. Council employs a number of staff who work on planning, designing and constructing works to be funded from S.94 contributions. In addition, consultant studies are often commissioned in order to determine design and costings of S.94 funded works. These may require revision on a regular basis. Also reviews of the demand for services and amenities, particularly the population based items, are conducted approximately every five years.

Council considers that the costs involved with administering S.94 are an integral and essential component of the efficient provision of amenities and services in the estate. Therefore, some of the costs of full-time staff and studies should be recouped from S.94 contributions.

"B" in the contribution formulae is the administrative component. It represents 2% of the cost of acquiring land and constructing works. Council considers that this small on-cost to recover part of the costs involved in administering S.94 is not unreasonable.

## **3.3 Indexation**

In the formula, previous capital expenditure (C1) is indexed to current day values using the Consumer Price Index - Sydney - Housing (CPI). This index is published by the Australian Bureau of Statistics on a quarterly basis.

The reason for indexing past expenditure is that every developer pays for a small proportion of the cost of providing each individual item identified in the Plan. This means that if / when items are constructed prior to all contributions within a catchment being collected, then "borrowing" (between items) occurs. If retrospective contributions are not indexed this "borrowing" will have occurred without any interest having been paid. This will result in a shortfall of funds when future items are constructed using the "paid back" contributions. What indexing effectively does is to make up the lost interest on the funds that have been borrowed between individual items.

The CPI is one of the indices recommended for use by the Department of Infrastructure Planning and Natural Resources.

## **3.4 Base Contribution Rate**

Contribution rates have been calculated using the formula in Section 3.1 above and components are shown in Appendix "C".

These rates are subject to review and indexation. This procedure is outlined in Section 3.3 above.

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## 4 EXPLANATION OF CONTRIBUTION FORMULA COMPONENTS

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### 4.1 Explanation of the Land Components

Before Council can construct amenities and services it must first acquire the land on which the amenities and services are to be constructed. The land to be acquired is often zoned for the specific purpose of the works to be constructed. For example, in the case of open space, the land to be acquired will be zoned 6(a) Open Space.

In the contribution formula:

- L1 - Represents land, which has previously been acquired by Council for the purpose of providing the particular works. This amount reflects the actual cost to Council of acquiring those parcels (including valuation and conveyancing charges) indexed to current day \$ values using the Consumer Price Index (CPI).
- L2 - Represents the estimated cost to Council of acquiring those lands required for the purpose of providing works. This figure is an estimated average total cost of acquisition; the amount adopted and does not necessarily reflect the value of the property. Each parcel of land to be acquired is subject to detailed valuation at the time of its acquisition. This figure is supplied by Council's Valuer and takes into account the following matters:
- Any acquisition is in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act, 1991 and land is to be acquired for an amount not less than its market value (unaffected by the proposal) at the date of acquisition.
  - That one of Council's objectives is to ensure that the funds Council receives for land acquisition from Section 94 Contributions in a particular catchment is equivalent to the amount required to fund the purchase of all the land Council must acquire in that catchment. Therefore, valuation and conveyancing charges incurred by Council when acquiring land are taken into account.

Council has calculated the total value of L1 and L2 in the contribution formula. These values are detailed in Appendix "B". The estimate for Land acquisition relates only to that land zoned 6(a). It does not include land required for roads fronting the 6(a) land. The developer will construct and dedicate all subdivisional roads including those fronting the public reserve free of cost to Council.

## 4.2 Explanation of the Capital Components

Schedules of works to be provided for the various items are detailed in Appendix "A".

In the contribution formulae:

- C1 - Represents the actual cost to Council of constructing works indexed to current day \$ values using the Consumer Price Index (CPI).
- C2 - Represents the estimated cost to Council of constructing works. This amount has been estimated by Council's City Projects Section based on the most detailed designs, which were available at the time of preparing the estimates. The date that has been adopted for the estimated costs is June 2001.

## 4.3 Explanation of the Catchment Area

The catchment is defined by the area of land subject to rezoning. The population of the catchment is the total "estimated population" based on a draft subdivision proposal. The expected population is in the order of 249 persons.

## 4.4 Assumed Occupancy Rates

For the purpose of calculating the open space contributions, occupancy rates have been determined for different types of development. These are as follows:

Dwelling houses	3.5 Persons / Dwelling
Dual Occupancy	
1 Bedroom	1.8 Persons / Dwelling
2 Bedroom	2.5 Persons / Dwelling
3+ Bedroom	3.5 Persons / Dwelling
Integrated Housing	3.5 Persons/ Dwelling
Other Medium density	
1 Bedroom Dwelling	1.8 Persons / Dwelling
2 Bedroom Dwelling	2.5 Persons / Dwelling
3 Bedroom Dwelling	3.3 Persons / Dwelling

Note: A bedroom is a room designed or intended for use as a bedroom or any room capable of being adapted to or used as a separate bedroom.

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# 5 Payment of Contributions

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## 5.1 Methods of payment

There are 3 possible methods of payment of S.94 Contributions - monetary contribution, dedication of land and works-in-kind agreements.

### Monetary Contribution

This is the usual method of payment. When a development consent is issued that involves the payment of a S.94 contribution, it contains a condition outlining the amount payable in monetary terms subject to indexation.

### Works-in-kind Agreements

Council may accept the construction of works listed in the schedules to this plan to offset the monetary contribution payable. The applicant will need to initiate this option by providing Council with full details of the work proposed to be undertaken. Council will then consider the request and advise the applicant accordingly.

The applicant will need to provide Council with suitable financial guarantees (normally by way of a Bank Guarantee) for 1.25 times the amount of the works in addition to a maintenance allowance. Upon completion of the works to Council's satisfaction the guarantee will be discharged by Council.

Approval of any Works-In-Kind is conditional upon the developer paying all Council's legal costs incurred in the preparation of the Works-In-Kind (Deed of) Agreement. Cost estimates for works include a component for supervision (equivalent to 3% of the cost of the works being undertaken). Where Works In Kind are undertaken Council requires that the supervision fee be in the form of a cash payment. Thus this particular part of the cost of the works is included as an offset against contributions.

In this instance, given the specific circumstances relating to the spot rezoning of this land for residential purposes, it is envisaged that embellishment of the reserve will be undertaken by the developer of the land.

### Land

As with the works component of this contributions plan, it is envisaged that the 6(a) land will be dedicated to Council. For the purposes of imposing a contribution rate upon development within the estate Council has assumed an acquisition value of \$85.00sq.m. As the Open Space land will be required to be dedicated this estimated value is immaterial as the Council will require that the s.94 public zoned land, ie the 6(a) Open Space, offset the monetary contribution payable for the land component of the Contributions Plan. The land that is to be provided must be in accordance with the zoning indicated on Council's planning instruments for the area. A total of 28.3 sq.m of Open Space per person is required to be dedicated with a maximum area of 4500 sq.m of Open Space being required for the entire estate irrespective of

the number of lots created. The assessment of the suitability of land for such an offset occurs at the Development or Subdivision Application stage. Thus the land component of the Open Space contribution will be satisfied upon the dedication of the entire area of land zoned 6(a).

It should be noted that Council will not release the final (linen) plan of subdivision which creates the land to be dedicated until a contract for the sale of the land (which confirms the purchase price/amount of compensation) has been entered into.

## 5.2 Timing of Payment

Council's policy regarding the timing of payment of S.94 contributions is as follows:

Approved under the EP & A Act as it existed pre July 1998 -

- Development Applications involving subdivisions  
Prior to the release of the "linen plan" of subdivision.
- Development Applications involving building work -  
Prior to release of the Building Permit.  
Note: Applications for combined building and subdivision approval are required to pay contributions upon whichever of these events occurs first.
- Development Applications where no building approval is required -  
Prior to occupation.

Approved under the EP & A Act as amended on and from July 1 1998 -

- Development Applications involving subdivisions  
Prior to release of the Subdivision Certificate
- Development Applications involving building work  
Prior to release of Building Construction Certificate.
- Development Applications where no building approval is required  
Prior to occupation or use of the development.

Note: Applications for combined building and subdivision approval are required to pay contributions upon whichever of these events occurs first.

## 5.3 Credits for Existing Development

As Section 94 contributions can only be levied where development will result in increased demand, contributions are not sought in relation to demand for urban facilities generated by existing authorised development. Thus 'credits' are granted in relation to urban demand generated by existing authorised development.

- A credit of 450m<sup>2</sup> and 3.5 persons is applied for existing authorised dwellings that are to be demolished in residential zones.
- In other instances a credit relating to the actual area occupied and retained for use by the existing development is generally applied. The credit granted is determined having regard for the individual circumstances.
- The area occupied is determined having regard to both the current and previous applications, aerial photos, the area occupied by existing authorised buildings and authorised activities on site.
- Residue lots are not levied until they are further developed. In residential zones Council places an 88B restriction on residue lots to deny any further development of the lot until it is further subdivided, consolidated or has a separate development application approval. Contributions are levied upon further subdivision, consolidation or separate development approval.

## 5.4 Indexation and Review of Contributions

Contribution rates are indexed quarterly in accordance with the Consumer Price Index - Sydney - Dwellings (CPI). See also Section 3.3.

The method of indexing the contribution rates is to multiply the base contribution rate by the most recently published CPI at the time of payment and divide it by the *June 2001 CPI (117.1)*. **At all times the contributions payable will not fall below the base rates listed at Appendix C.**

## 5.5 Discounting of Contributions

Council does not discount contributions both for equity and financial reasons, as it would be inequitable to recoup a discount from remaining development. Discounting would also compromise Council's ability to provide the facilities and would place an additional burden on existing residents to subsidise new development.

## 5.6 Deferred Payment of Contributions

Council has a policy for the deferred payment of S.94 contributions as follows:

- An applicant requesting deferred payment needs to apply in writing to Council. All requests are considered on their merits having regard to (but not exclusively) the type of work for which the contribution is sought, the rate of development occurring within the area and the impending need to construct the works for which S.94 Contributions are being levied.
- Where deferred payment is approved by Council the period of time for deferring payment will generally be limited to 12 months.
- If Council approves of the request for deferred payment it is conditional upon the applicant providing a suitable Bank Guarantee and Deed of Agreement.

- Interest is charged on deferred contributions. Council also charges an administrative fee for deferred payment. The interest rate and administrative fee levied for the deferred payment of contributions are reviewed annually and appear in Council's Schedule of Fees. A copy of this Schedule is available from Council's Development Services Unit.
- The amount of the bank guarantee shall be the sum of the amount of contributions outstanding at the time of deferring payment plus the expected "interest" accrued over the deferral period. This amount will also represent the amount payable at the end of the deferral period.
- The Deed of Agreement is to be prepared by one of Council's Solicitors at full cost to the applicant. In this regard the applicant is to pay Council's Solicitor's costs direct to the Solicitor and not through Council.
- Should contributions not be paid by the due date, the bank guarantee will be called up by Council.
- Council has a separate deferral policy specifically for dual occupancies, which are to be occupied by elderly and/or disabled persons (i.e. traditional granny flats).
- Enquiries regarding deferred payment can be made through contacting the responsible Council contact officer.

# *APPENDICES*

**SCHEDULE OF WORKS – NEW TRIBES MISSION SITE  
OPEN SPACE EMBELLISHMENT COSTS AND WORKS SCHEDULE**

<b>BCC Res No.</b>	<b>Description of works</b>	<b>Estimated area of reserve (ha)</b>	<b>S.73 Water Connection</b>	<b>Playground</b>	<b>Landscape Rate per ha</b>	<b>Fencing &amp; Fees</b>	<b>Amount yet to spend, including 3% supervision fee</b>	<b>Timing of Provision</b>
New Reserve	Playground & landscaping	0.45	\$5,707	\$42,423	\$115,383	\$7,419	\$110,695	Post 2002

**APPENDIX A**

**SCHEDULE OF VALUES IN THE CONTRIBUTIONS FORMULA  
NEW TRIBES MISSION SITE**

<b>CATCHMENT</b>	<b>SIZE OF CATCHMENT (persons)</b>	<b>C1 (\$)</b>	<b>C2 (\$)</b>	<b>L1 (\$)</b>	<b>L2 (\$)</b>	<b>L1 +L2+C1+C2 (\$)</b>
NEW TRIBES MISSION SITE	259	\$0	\$110,695	\$0	\$382,500	\$493,195

Size of catchment is based on estimated lot yield of 74 with 3.5 persons per lot.

**APPENDIX C****BASE CONTRIBUTION RATE**

(Base CPI June 2001)

<b>ITEM</b>	<b>CONTRIBUTION RATE (\$ per Person)</b>
<b>Open Space - Land</b>	<b>\$1,506</b> <b>OR dedication of 28.3 sq.m of zoned Open Space per person</b> <b>(with a maximum area to be dedicated of 4500 sq.m)</b>
<b>Open Space - Embellishment</b>	<b>\$436</b>