

S94 Contributions Plan Progress Update

Responsible Division: Environment & Infrastructure
Officer: Group Manager - Planning
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Summary:

Council has recently commissioned consultants GLN Planning for the purposes of preparing a new Development Contributions Plan (S94 plan) for Cumberland. There are four components to this work, and this report provides a progress update on two of the components that have been completed to date. These include reconciling the receipts and expenditure under the existing Auburn and Holroyd contributions plans and the provision of advice to Council on the proposed timing of infrastructure delivery for the Merrylands Centre. This second part of the review focuses on the Holroyd Contributions Plan 2013 as public concerns have been raised over completed and planned expenditure of contributions on land acquisitions in the Merrylands Centre. Council has requested advice on the expenditure in relation to its obligations under the Environmental Planning and Assessment Act 1979.

This review identified a number of concerns, including the significant internal borrowing that has occurred to forward-fund projects, and that there has been a significant overspend on land acquisitions compared to the provision in the Holroyd Contributions Plan. A plan to repay these amounts is required. The consultants have also identified the comparatively low contributions rates under the Auburn Contributions Plan.

Report Recommendation:

That Council:

1. **Separate S94 contribution funds across Cumberland into separate accounts based on plan, as well as location and/or contribution type, to enable management of internal borrowings.**
2. **Establish a plan and timing for repaying the internal borrowings between section 94 accounts.**
3. **Review assumptions, land and works costs, works programs and staging plans for infrastructure projects for the Merrylands Centre as part of the new S94 Contributions Plan for Cumberland, to minimise funding risk for Council.**
4. **Put a hold on any further S94 contributions expenditure towards the Merrylands City (Public) Car Park until the borrowed funds have been repaid.**
5. **Put a hold on any further S94 contributions expenditure from the Holroyd S94 Contributions Plan 2013 in the Merrylands Centre (General and Central Drainage Precincts), with the exception of the programmed stormwater works and public domain improvement works that have been incorporated into the 2017-2020 budgets, until a new S94 plan with updated costings, works program and staging has been finalised.**

6. Continue with the development of a new Section 94 Contributions Plan for Cumberland to increase development contributions toward the local infrastructure costs associated with development in the former Auburn and Parramatta LGA areas.

Report:

Council has commissioned consultants GLN Planning to prepare a new Development Contributions Plan (S94 plan) for Cumberland. The overall objectives of this project are to:

- Reconcile existing s94 funds across all existing contributions plans applying to the Cumberland LGA;
- Prepare a contributions plan to support the immediate implementation of the *Parramatta Road Urban Transformation Strategy 2016* by Cumberland Council;
- Standardise/arrive at an equitable contribution system across Cumberland;
- Develop a S94 approach which is practical to administer and which will assist Council in meeting its requirements to service new growth within Cumberland;
- Provide specific advice to Council on the timing of delivery of infrastructure in the Merrylands Centre; and
- Achieve best value and public amenity outcomes to service the growing community of Cumberland.

The scope of the review also required the provision of advice to Council on the proposed timing of infrastructure delivery for the Merrylands Centre, and specifically, value for money for proposed S94 expenditure.

The consultant's work to date has included:

- A reconciliation of existing s94 funds across all existing contribution plans applying to the Cumberland LGA;
- Specific advice to Council on the timing of delivery of infrastructure in the Merrylands centre;
- A review of receipts and expenditure for all development catchments, with a focus on Merrylands and Neil Street catchments;
- A review of Merrylands development approvals and status of key projects (e.g. Merrylands City Central Project);
- A review of completed and planned land acquisitions and works and rate importance of works;
- A review of whether recent spending of section 94 monies under the plans is in accordance with contributions practice;
- An assessment of the likely development profile for Merrylands;
- Reviews of the section 94 contributions receipts and expenditure under the Holroyd and Auburn contributions plans and recommendations on the current accounting practices.
- Analysis of the section 94 expenditure in Merrylands Town Centre and the adjacent Neil Street Precinct, and the potential risks to the delivery of the

contributions plan works schedule, particularly in relation to the proposed public car park.

- Recommendations for repaying the substantial internal borrowings from other section 94 accounts that have been incurred under the Holroyd Contributions Plan, including recommendations to minimise funding risk for Council
- Identification of Council's legal obligations and the management and administration of public funds, specifically the monies, works and land that developers contribute for the purpose of providing public amenities and services that are required to meet the demands of new developments.

Key Findings – S94 expenditure and delivery of Holroyd Contributions Plan Infrastructure

There has been considerable spending on land acquisition in the Merrylands Centre which has been financed through internal borrowing. The *Environmental Planning and Assessment Act* and *Regulation* require that all facilities in contributions plans be provided in a reasonable time. This means that any internal borrowing is repaid to the source or 'donor' contributions accounts. It was found there was no evidence that the former Holroyd City Council had a documented plan toward repaying the donor section 94 accounts. Aside from its statutory obligations, Cumberland Council would risk undermining public confidence in its financial management if it did not repay these section 94 accounts.

The land acquisitions have been partly driven by factors associated with Council's McFarlane Street site and the forward funding of land acquisition for the City Square, with higher costs than valued in the S94 Plan eventuating. The acquisitions as a whole have cost considerably more than the amounts allowed for in the plan. The section 94 debt attributable to land acquisitions is currently \$10.08 million, and this amount needs to be repaid to the Plan.

Another significant risk to the repayment of the donor accounts is the car parking facilities and contributions arrangements contained in the Holroyd Plan. It is expected that, because of overly optimistic development and contributions assumptions, only a small fraction of the funding needed for the Merrylands car park will be able to be funded by development contributions. Should Council wish to provide significant additional public parking in the Merrylands Centre, a review of the Plan's demand assumptions and minimum contribution requirements should be carried out.

Based on the available evidence, it is unlikely that the donor section 94 accounts will ever be fully repaid using contributions alone. Council may need to develop a comprehensive plan to repay the accounts in order to deliver the local infrastructure required in Merrylands Centre and beyond, under the Holroyd Contributions Plan.

While most of the spending has been in Merrylands centre, most of the contributions have been collected from development in contributions catchments situated outside the centre, including Toongabbie, Wentworthville and South Wentworthville.

The spending so far has been sustained by internal borrowing from the Toongabbie, Merrylands car parking, and Merrylands city-wide Open Space section 94 accounts, by other section 94 accounts. The substantial borrowing that has occurred - in the order of

\$10M - reflects the cost exceedance of the items well above the Plan's cost estimates/budget for these items.

There has been a significant overspend on land acquisitions compared to the provision in the Holroyd Contributions Plan, and it is strongly recommended that a plan to repay the identified Contributions Plan amounts be developed and implemented.

Key findings – Accounting practices under the Holroyd Contributions Plan 2013

The accounts show that most of the expenditure to date has been pooled and borrowed internally from the other parts of the Holroyd Contributions Plan (mainly for land acquisition). However, the review found that, due to there being a single centralised account, there is no way to easily identify exactly from where the funds have been borrowed, and therefore how much money should be repaid.

Since the Holroyd Contributions Plan commenced implementation in August 2013, all contribution receipts have been allocated to one account. Separate facility accounts – based on location and/or type of contribution would allow the contributions received to be more transparent and enable the internal borrowing to be tracked and managed.

It is noted that many of the items committed to above, including land acquisitions were to be forward funded by an external loan which has not been pursued. Land acquisitions have instead been finalised using internal borrowing of section 94 monies collected for other purposes.

Recommended S94 Actions for Merrylands Centre

The Consultant's review identified other section 94 administration actions that Council should undertake to support the Merrylands Centre Revitalisation strategy as listed below:

(a) Complete the purchase of 5A Memorial Avenue if proven in the business case, and keep the option open to acquire the remaining properties between the former Holroyd Civic Centre and Post Office Lane. It is understood that the purchase of the private car park in Memorial Avenue in Merrylands has been put on hold. However the land is a strategic opportunity that is likely to form a critical part of the Land and Facilities Strategy.

(b) Review assumptions underpinning estimates of future public car parking demand in the Merrylands centre, and identify the public car parking requirements for the Merrylands centre anticipated over the next 20 years.

(c) Review the Council's current contributions policy for parking requirements in new developments in the Merrylands centre, with a view to increasing the proportion of parking for new developments that is provided by way of contributions.

(d) Update the section 94 contributions plan to incorporate the outcomes of the facility needs assessment discussed above.

(e) Negotiate the delivery of Neil Street Precinct infrastructure by the developers of land in the precinct, as there is significant interest from a relatively small number of land holders to allow this to happen.

It is noted that the intention for the car park site was not only to deliver new S94 funding parking infrastructure in a central location, but also other relocated public parking in a central location, and in this context S94 funds should not be relied on to fund the remaining land in Memorial Avenue.

Key Findings – Auburn Contributions Plan 2007

The review found that in relation to the Auburn S94 contributions, under the Auburn Contributions Plan 2007 there are separate income accounts so that income for individual facilities is easy to find, and expenditure has generally been allocated to the correct expense account.

The consultants have observed that *“The residential rates (in the former Auburn LGA) are relatively low when compared to rates in the former Holroyd area and in other middle ring Sydney LGAs that operate a section 94 contributions regime. For example, 2 bedroom dwellings in the town centres in the former Holroyd area are around \$15,000 per dwelling”*. *“The current contribution rate for 2-bedroom apartments is just over \$6,000 per dwelling”*.

The low Auburn rates are due to the contributions plan being 10 years old, and it having a modest capital works schedule for the amount of development envisaged at that time. GLN Planning have commenced the preparation of a new development contributions plan for the whole Cumberland LGA. They have advised that while *“the contribution rates in that plan will not be known until a thorough examination of infrastructure needs has been completed... it is likely that the new plan will contain significantly higher contribution rates for new residential development in the former Auburn area”*. This will be necessary to meet the costs involved with local infrastructure needs which are currently not currently being met. The former Woodville Ward of Parramatta LGA S94A rates are even lower, having a 1% of development cost levy which equates to \$2,000-\$3,000 per dwelling.

Risk

GLN identified a number of risks within their report, including that there is both a public expectation and a legislative obligation that both the Auburn and Holroyd funds will be used for the purpose for which they have been collected. If money is pooled there should be a sustainable path established toward paying back the ‘donor’ section 94 accounts. If this is not done, significant contributions pooling, as with the Holroyd funds, carries the risk of undermining public confidence in Council’s management of its funds.

Conclusion:

A plan to repay the extensive internal borrowing under the Holroyd Contributions Plan 2013 needs to be established to provide transparency and accountability to the public. Further unprogrammed works in Merrylands Centre should be put on hold until appropriate to occur. Contributions will likely need to be increased significantly in parts of Cumberland to contribute to the infrastructure costs associated with development. In

addition better account management and approval practices are required to appropriately manage increased funds and deliver infrastructure where it is required, in a timely way.

Consultation:

There are no consultation processes for Council associated with this report. However when a new Cumberland s94 Contributions Plan is developed, it will be important to review future community infrastructure needs, and for the community to be engaged throughout this process.

Financial Implications:

There are significant financial implications for Council associated with this report.

Should Council adopt the recommendations suggested in this report, there will be a number of positive financial implications, including the improved management of and repayment of funds, as well as potential for increased funding towards local infrastructure costs associated with development into the future. The recommendations of this report seek to provide transparency and accountability to the public.

Policy Implications:

Councils are required to be accountable for the contributions they receive from developers, including maintaining a contributions register (EP&A Regulation, clause 34), and maintaining accounting records (EP&A Regulation, clause 35) including the following:

- details on the pooling or progressive application of the contributions or levies for those purposes and the amounts spent in accordance with the plan, by reference to the various kinds of public amenities or services for which they have been spent, and
- details of receipts, expenditure and any interest earned in its annual financial report, and
- details on the outstanding obligations of the council to provide public amenities or services.

Council is currently preparing a new Development Contributions Plan for Cumberland that will, among other things: i) reconcile existing s94 funds across all existing contributions plans applying to the Cumberland LGA; ii) incorporate a more transparent S94 approach which is practical to administer and which will assist Council in meeting its requirements to service new growth within Cumberland; and iii) ensure the achievement of best value and public amenity outcomes to service the growing community of Cumberland.

In accordance with Council's previous report in June 2017 (Item 076/17 Recommendation 2) Council will undertake the development of a strategic approach and a business case for the future of the Merrylands Centre to ensure that i) adequate funds (including S94 funds) are available and allocated; ii) the highest and best use is identified; and iii) risks are mitigated.

Communication / Publications:

Community notice will be provided through local newspapers and Council's website if further work is undertaken to refine or reconfigure the Merrylands City Centre Revitalisation project, and in relation to the new Cumberland S94 Contributions Plan.

Attachments:

1. GLN Review of Section 94 Income and Expenditure June 2017.