

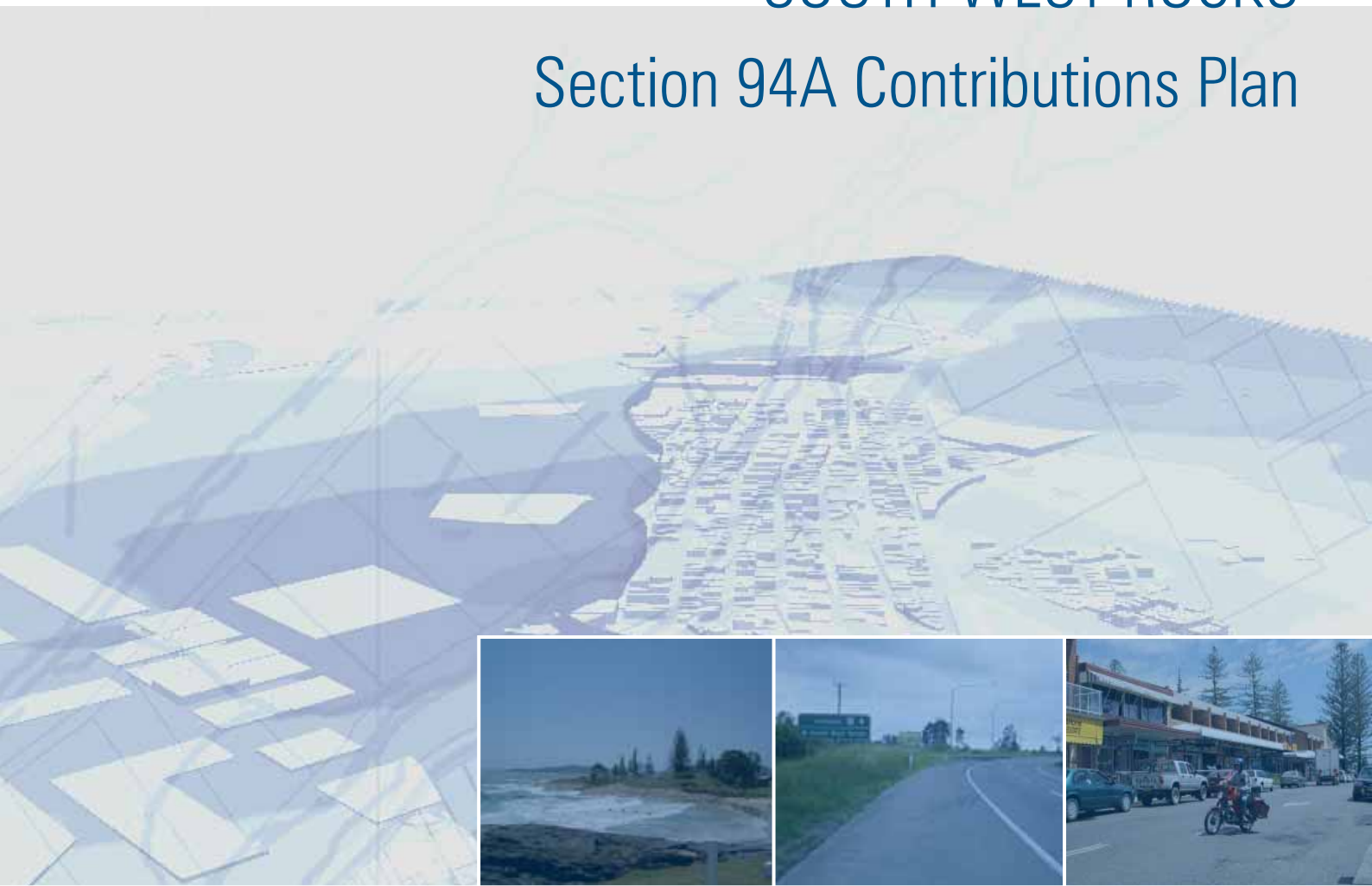


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SOUTH WEST ROCKS

Section 94A Contributions Plan



December 2007



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Appendices

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1. Summary Schedules

The works schedule contained in Appendix A of this plan identifies the public facilities for which section 94A (s94A) levies will be required.

Levies paid to Council will be applied towards meeting the cost of provision or augmentation of new public facilities. Appendix A provides a summary of new public facilities, which will be provided by Council over the next 10 years.

Summary schedule for section 94A contributions plan

Proposed cost of the development	Levy (%)
\$100,000 or less	Nil
\$100,001 – \$200,000	0.5%
More than \$200,000	1.0 %



2. Administration and Operation of the Plan

2.1 What is the name of this development contributions plan?

This development contributions plan is called the South West Rocks Section 94A Development Contributions Plan 2007.

2.2 When does this development contributions plan commence?

This contributions plan commences on 18 December 2007.

2.3 What is the purpose of this contributions plan?

The primary purposes of this contributions plan are:

- ▶ to authorise, as a condition of development consent upon effected development applications and complying development certificates, the imposition of a contribution pursuant to section 94A of the *EP&A Act 1979*;
- ▶ to assist the council to provide the appropriate public facilities which are required to maintain and enhance amenity and service delivery within the area; and
- ▶ to publicly identify the purposes for which the levies are required.

2.4 Land to which this plan applies

This plan applies to land within the local government area of Kempsey as shown on the map in Appendix C.

This development contributions plan applies to applications for development consent and applications for complying development certificates under Part 4 of the *Environmental Planning and Assessment Act 1979*.

2.5 Development to which this plan applies

This plan applies to all development whose total development cost is greater than \$100,000.

The 'total development cost' is determined having accounted for each of the contributing cost factors set out within clause 25J of the *EP&A Regulations 2000* and through the full and accurate completion (to the satisfaction of Council) of the Cost Summary Sheet lodged with the development application or complying development application.

2.6 Relationship to other Plans

This Plan supersedes:

- ▶ Kempsey Shire Council (1993) Section 94 Contributions Plan for Stormwater Drainage- As Amended 2002.
- ▶ Kempsey Shire Council (1993) Section 94 Contributions Plan for Off Street Car parking- As Amended 2001.



- ▶ Kempsey Shire Council (2001) Section 94 Contributions Plan for Outdoor Recreation.
- ▶ Kempsey Shire Council (2001) Section 94 Contributions Plan - Belle O'Connor Catchment – Distributor Road.
- ▶ Kempsey Shire Council (1997) Section 94 Contributions Plan Trunk Stormwater Drainage Belle O'Connor, South West Rocks.

2.7 How is the total development cost determined?

Clause 25J of the EP&A Regulations 2000 sets out how to determine the total cost of development:

25J Section 94A levy—determination of proposed cost of development

- (1) *The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 94A levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:*
 - (a) *if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,*
 - (b) *if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,*
 - (c) *if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.*
- (2) *For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.*
- (3) *The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:*
 - (a) *the cost of the land on which the development is to be carried out,*
 - (b) *the costs of any repairs to any building or works on the land that are to be retained in connection with the development,*
 - (c) *the costs associated with marketing or financing the development (including interest on any loans),*
 - (d) *the costs associated with legal work carried out or to be carried out in connection with the development,*
 - (e) *project management costs associated with the development,*
 - (f) *the cost of building insurance in respect of the development,*



- (g) *the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),*
- (h) *the costs of commercial stock inventory,*
- (i) *any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law.*

2.8 Are there any exemptions to the levy?

The levy will not be imposed in respect of development:

- ▶ where the proposed cost of carrying out the development is \$100,000 or less;
- ▶ for the purpose of disabled access;
- ▶ for the sole purpose of providing affordable housing;
- ▶ for the purpose of reducing a building's use of potable water (where supplied from water mains) or energy;
- ▶ for the sole purpose of the adaptive reuse of an item of environmental heritage;
- ▶ that has been the subject of a condition under section 94 under a previous development consent relating to the subdivision of the land on which the development is to be carried out; or
- ▶ carried out for any public purpose by (or on behalf of) Council or any other public authority.

2.9 Pooling of levies

This plan expressly authorises s94A levies paid for different purposes to be pooled and applied (progressively or otherwise) for those purposes. The priorities for the expenditure of the levies are shown in the works schedule.

2.10 Construction certificates and the obligation of accredited certifiers

In accordance with clause 146 of the *EP&A Regulation 2000*, a certifying authority must not issue a construction certificate for building work or subdivision work under a development consent, or issue a Complying Development Certificate, unless it has verified that any condition requiring the payment of levies has been satisfied.

In particular, the certifier must ensure that the applicant provides a receipt(s) confirming that levies have been fully paid and copies of such receipts must be included with copies of the certified plans provided to Council in accordance with clause 142(2) of the *EP&A Regulation*. Failure to follow this procedure may render such a certificate invalid.

The only exceptions to the requirement are where a works in kind, material public benefit, and dedication of land or deferred payment arrangement has been agreed by Council. In such cases, Council will issue a letter confirming that an alternative payment method has been agreed with the applicant.



2.11 Can deferred or periodic payments be made?

The Council's policy is to allow deferred or periodic payment of monetary section 94A contributions subject to consideration of a written application made to the Council before the time for payment of the contribution occurs under this plan.

In deciding whether to allow deferred or periodic payment of a monetary s94 contribution, Council will take into consideration the following matters:

- ▶ The reasons provided by the applicant requesting a deferred or periodic payment;
- ▶ no prejudice will be caused to the community deriving benefit from the services being provided under this plan;
- ▶ whether allowing the deferred or periodic payment is likely to prevent the public facility being provided to meet the demands of development in a timely manner;
- ▶ whether the applicant has provided the Council with adequate security in relation to the deferred or periodic payment;
- ▶ any other relevant circumstances of the case.

If the Council determines to allow the application, the arrangements relating to the deferred or periodic payment will not take effect until the applicant has entered into a written agreement with the Council reflecting the terms of the Council's approval.

The decision to agree to such a request will be at the complete discretion of Council.

If Council does decide to accept deferred or periodic payment, Council may require the applicant to provide a bank guarantee by a bank for the full amount of the contribution or the outstanding balance on condition that:

- ▶ Indexing will be calculated from the date the contribution was due until the date of payment;
- ▶ the bank guarantee be by a bank for the amount of the total contribution, or the amount of the outstanding contribution, plus an amount equal to thirteen (13) months interest plus any charges associated with establishing or operating the bank security;
- ▶ the bank unconditionally pays the guaranteed sum to the council if the council so demands in writing not earlier than 12 months from the provision of the guarantee or completion of the work;
- ▶ the bank must pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development;
- ▶ the bank's obligations are discharged when payment to the council is made in accordance with this guarantee or when council notifies the bank in writing that the guarantee is no longer required;
- ▶ where a bank guarantee has been deposited with council, the guarantee shall not be cancelled until such time as the original contribution and accrued interest are paid.

2.12 Are there alternatives to payment of the levy?

The council may accept an offer by the applicant to provide an "in-kind" contribution (ie the applicant completes part or all of work/s identified in the plan) or through provision of another material public



benefit in lieu of the applicant satisfying its obligations under this plan. The decision to accept such offers is at the sole discretion of the Council.

Council may accept such alternatives in the following circumstances:

a) Offer made to the Council as part of a development application

The applicant may include in the relevant development application or in an application for a modification under section 96 of the *EP&A Act 1979*, an offer to carry out works or provide a material public benefit towards which the levy is to be applied. The Council will consider the offer as part of its assessment of the development application or as an application for a modification to a development approval under section 96 of the *EP&A Act 1979* where a levy has been imposed pursuant to this plan. If the Council agrees to the arrangement and grants consent to the application, it will substitute a condition of consent under section 80A or section 96 of the *EP&A Act 1979* (whichever is relevant) requiring the works to be carried out or the material public benefit to be provided for a condition requiring payment of a levy under section 94A.

In assessing the applicant's offer, the Council will have regard to any relevant requirements of the current Practice Note issued by the NSW Government (DIPNR 2005) and such other matters as the Council considers relevant in the circumstances of the case including, but not limited to:

- (a) the value of the works to be undertaken is at least equal to the value of the contribution that would otherwise be required under this plan; and
- (b) the standard of the works is to council's full satisfaction and the works are handed over to the Council without restriction of limitation; and
- (c) the provision of the material public benefit will not prejudice the timing or the manner of the provision of public facilities included in the works program.

b) Offer to enter into a voluntary planning agreement

An applicant may offer to enter into a voluntary planning agreement with the Council under s93F of the *EP&A Act* in connection with the making of a development application. This offer may include payment of money, dedication of land, the carrying out of works, or another material public benefit for public purposes. Those purposes need not relate to the impacts of the applicant's development nor to the items listed in Appendix A: Works Schedule.

The applicant's provision under a planning agreement may be additional to or instead of paying a levy in accordance with a condition of development consent authorised by this plan. This will be a matter for negotiation with the Council. The offer to enter into the planning agreement together with a copy of the draft agreement should accompany the relevant development application.

The Council will publicly notify the draft planning agreement and an explanatory note relating to the draft agreement along with the development application and will consider the agreement as part of the assessment of that application.

If the Council agrees to enter into the planning agreement, it may impose a condition of development consent under s93I (3) of the *EP&A Act* requiring the agreement to be entered into and performed. If the Council does not agree to enter into the planning agreement, it may grant consent subject to a condition authorised by this plan requiring the payment of a levy.



Applicants should refer to the Council's Policy on Planning Agreements, which has been prepared having regard to the Practice Note on Planning Agreements (DIPNR 2005).

2.13 How will the Council apply money obtained from the levy?

Money paid to the Council under a condition authorised by this plan is to be applied by the Council towards meeting the cost of the public facilities that will be or have been provided within the area as listed in of this plan.

2.14 Savings and transitional arrangements

A development application which has been submitted prior to the adoption of this plan but not determined shall be determined in accordance with the provisions of this plan.

2.15 Plan will be subject to periodic review

Council is to undertake periodic reviews of the works included within Appendix A of this plan, including the maintenance of a record of completed works and the introduction of new services and facilities into the works schedule in place of those completed.



3. Rates

3.1 How will the levy be calculated?

The levy will be calculated as follows:

Proposed cost of the development	Levy (%)
\$100,000 or less	Nil
\$100,001 – \$200,000	0.5%
More than \$200,000	1.0 %

Levy payable = rate x \$C

Where:

Rate: is the rate indicated in the table above.

\$C: is the proposed cost of carrying out the development.

3.2 How is the proposed cost of carrying out the development determined?

The proposed cost of carrying out the development will be determined in accordance with clause 25J of the *EP&A Regulation*. The procedures set out in Appendix B to this plan must be followed to enable the council to determine the amount of the levy to be paid.

The value of the works must be provided by the applicant at the time of the request and must be independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications.

Without limitation to the above, Council may review the valuation of works and may seek the services of an independent person to verify the costs. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant and no construction certificate will be issued until such time that the levy has been paid.

3.3 Cost summary reports must accompany development applications or applications for complying development certificates

An application for a development application or a complying development certificate is to be accompanied by a report, prepared at the applicant's cost in accordance with this clause, setting out an estimate of the proposed cost of carrying out the development for the purposes of clause 25J of the *EP&A Regulation*.

The following types of report are required:

- ▶ where the estimate of the proposed cost of carrying out the development is less than \$1,000,000 - a cost summary report in accordance with Appendix B;
- ▶ where the estimate of the proposed cost of carrying out the development is \$1,000,000 or more – a detailed cost report in accordance with Appendix B.



3.4 Who may provide a report for the purposes of clause 12 of this plan?

For the purpose of clause 25J(2) of the Regulation and clause 3.3 of this plan, the following persons are approved by the Council to provide an estimate of the proposed cost of carrying out development in the following circumstances:

- ▶ where the proposed development cost is less than \$1,000,000 - a person who, in the opinion of the Council, is suitably qualified to provide a cost summary report;
- ▶ where the proposed development cost is \$1,000,000 or more – a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors.

Upon reviewing a cost summary report, the Council may require a further estimate to be provided by a registered quantity surveyor at the applicant’s cost. The Council may, at the applicant’s cost, engage a person referred to in this clause to review a report submitted by an applicant in accordance with clause 3.3.

3.5 When is the levy payable?

A levy must be paid to the council at the time specified in the condition that imposes the levy. If no such time is specified, the levy must be paid prior to the issue of a subdivision certificate, construction certificate or complying development certificate.

3.6 How will the levy be adjusted?

Contributions required as a condition of consent under the provisions of this plan will be adjusted at the time of payment of the contribution in accordance with the following formula:

$$\text{Contribution at time of payment} = \$C_0 + A$$

Where:

C_0 is the original contribution as set out in the consent

A is the adjustment amount which is =

$$\text{Where} \quad \frac{\$C_0 \times (\text{Current CPI} - \text{Base CPI})}{\text{Base CPI}}$$

Current CPI is the Consumer Price Index for ‘Sydney – All Groups’ as published by the Australian Bureau of Statistics available at the time of review of the contribution rate;

Base CPI is the Consumer Price Index for ‘Sydney – All Groups’ as published by the Australian Bureau of Statistics at the date of adoption of this plan which is 18 December 2007.

Note: In the event that the Current CPI for Sydney is less than that for the previous quarter, the Current CPI for Sydney shall be taken as not less than the previous.



4. Expected Development and Demand for Public Facilities.

This part broadly discusses the relationship between the expected types of development in South West Rocks and the demand for additional public amenities and services to meet that development. That relationship is established through current demographic information.

The expected types of development are, but are not limited to:

- ▶ Commercial, Retail, Industrial and other Employment based development, or residential development, including mixed use, that would create a demand for public amenities.

The relationship between expected development and the demand for public facilities is established with reference to the following observed trends and projections:

- ▶ The population projections undertaken by Council, adopted from the Australian Bureau of Statistics (ABS) information indicates that continued population growth in South West Rocks established areas (excluding release areas around Arakoon Road) is expected. A projected population of 11,381 is expected in the established areas by 2031;
- ▶ it is expected residential development in the South West Rocks Release Area will be 2414 dwellings. With an average household occupancy rate of 2.3 persons per household, resulting in an additional population in the South West Rocks of approximately 5,552 residents within the release areas over the next ten years;
- ▶ accelerating housing costs on the North Coast contribute to certain pressures in South West Rocks, particularly new housing developments, which will largely impact the future needs of the region;
- ▶ the likely population growth will place additional demands upon the business and commercial services at South West Rocks. This will require the provision of additional public facilities to meet additional demand; and
- ▶ the likely population growth will diminish the enjoyment and standard of public facilities for the existing population unless additional facilities are provided to meet the additional demand.

Kempsey Shire Council is committed to promoting sustainability across all areas of the community. Council defines this as delivering, social, cultural and environmental systems that operate in harmony for the benefit and wellbeing of all residents. The objective is to enable residents to enjoy a good quality of life in an active and vibrant community. Council's role in the provision of community and recreation facilities and civil infrastructure all contribute to the collective and individual wellbeing. Council aims to provide access and equity to all services and facilities for all members of the community.

The s94A levy will enable Council to provide high quality and diverse public facilities to meet the expectations of the existing and new businesses and residents of South West Rocks.

The additional public facilities to be provided to meet the expected future development are set out in Appendix A.



5. Definitions

In this plan unless the context or subject matter otherwise indicates or requires:

ABS means the Australian Bureau of Statistics,

Act means the *Environmental Planning and Assessment Act 1979*,

Council means the Council of the Kempsey Shire,

CPI means Consumer Price Index

development contributions means a development contribution required to be paid by a condition of development consent imposed pursuant to section 94 of the Act,

EP&A Act means *Environmental Planning and Assessment Act, 1979, as amended*

levy means a levy under s94A of the Act authorised by this plan,

Minister means the Minister administering the Act,

public facility means a public amenity or public service,

Regulation means the *Environmental Planning and Assessment Regulation 2000*,

S94A plan and **contributions plan** mean a contributions plan made pursuant to section 94B of the Act,

total development cost means the cumulative cost of all factors listed in clause 25J of the Regulations and Part 3 of this plan.



Appendix A
Works Program



Works Schedule

Schedule 1 (Clause 2.13)

This Part lists the works to be funded by contributions collected under the provisions of this plan.

This Schedule of Works is to be progressively updated to reflect adjustment to the CPI, the completion of the listed works and to add new projects as the Schedule nears completion.

Project No	Public Facilities	Location	Description of Works	Estimated Cost	Priority	Estimated Time Fame
1	Public Domain Facilities	Prince of Wales Ave	Street trees, furniture, paving	\$500 000	High	2016
2	Public Domain Facilities	Landsborough St West	Avenue planting	\$200 000	Medium	2020
3	Public Domain Facilities	Paragon Avenue	Street tree, furniture, paving	\$300 000	Low	2025
Total				\$1,000,000		

The location of these facilities is highlighted on the map at Appendix D .



Appendix B
Cost Summary Report



Cost Report Summary

(Clause 3.3)

A cost summary report is required to be submitted to allow council to determine the contribution that will be required. The items and components of the following form should be used as a guide in determining the total cost of a development, for the purpose of determining the s94A levy that applies.

Sample Cost Summary Report

Cost Summary Report [Development Cost no greater than \$1,000,000]

DEVELOPMENT APPLICATION No. _____ REFERENCE: _____

COMPLYING DEVELOPMENT CERTIFICATE APPLICATION NO. _____

CONSTRUCTION CERTIFICATE No. _____ DATE: _____

APPLICANT'S NAME: _____

APPLICANT'S ADDRESS: _____

DEVELOPMENT NAME: _____

DEVELOPMENT ADDRESS: _____

ANALYSIS OF DEVELOPMENT COSTS:

Demolition and alterations	\$	Hydraulic services	\$
Structure	\$	Mechanical services	\$
External walls, windows and doors	\$	Fire services	\$
Internal walls, screens and doors	\$	Lift services	\$
Wall finishes	\$	External works	\$
Floor finishes	\$	External services	\$
Ceiling finishes	\$	Other related work	\$
Fittings and equipment	\$	Sub-total	\$



Sub-total above carried forward	\$
Preliminaries and margin	\$
Sub-total	\$
Consultant Fees	\$
Other related development costs	\$
Sub-total	\$
Goods and Services Tax	\$
TOTAL DEVELOPMENT COST	\$

I certify that I have:

- ▶ inspected the plans the subject of the application for development consent or construction certificate.
- ▶ calculated the development costs in accordance with the definition of development costs in clause 25J of the *Environmental Planning and Assessment Regulation 2000* at current prices.
- ▶ included GST in the calculation of development cost.

Signed: _____

Name: _____

Position and Qualifications: _____

Date: _____



Sample Quantity Surveyors Report

Registered* Quantity Surveyor's Detailed Cost Report

[Development Cost in excess of \$[1,000,000]

*A member of the Australian Institute of Quantity Surveyors

DEVELOPMENT APPLICATION No. _____ REFERENCE: _____

CONSTRUCTION CERTIFICATE No. _____ DATE: _____

APPLICANT'S NAME: _____

APPLICANT'S ADDRESS: _____

DEVELOPMENT NAME: _____

DEVELOPMENT ADDRESS: _____

DEVELOPMENT DETAILS:

Gross Floor Area – Commercial	m ²	Gross Floor Area – Other	m ²
Gross Floor Area – Residential	m ²	Total Gross Floor Area	m ²
Gross Floor Area – Retail	m ²	Total Site Area	m ²
Gross Floor Area – Car Parking	m ²	Total Car Parking Spaces	
Total Development Cost	\$		
Total Construction Cost	\$		
Total GST	\$		

ESTIMATE DETAILS:

Professional Fees	\$	Excavation	\$
% of Development Cost	%	Cost per square metre of site area	\$/m ²
% of Construction Cost	%	Car Park	\$
Demolition and Site Preparation	\$	Cost per square metre of site area	\$/m ²
Cost per square metre of site area	\$/m ²	Cost per space	\$ /space



Construction – Commercial	\$	Fit-out – Commercial	\$
Cost per square metre of site area	\$/m ²	Cost per m ² of commercial area	\$/m ²
Construction – Residential	\$	Fit-out – Residential	\$
Cost per square metre of residential area	\$/m ²	Cost per m ² of residential area	\$/m ²
Construction – Retail	\$	Fit-out – Retail	\$
Cost per square metre of retail area	\$/m ²	Cost per m ² of retail area	\$/m ²

I certify that I have:

- inspected the plans the subject of the application for development consent or construction certificate.
- prepared and attached an elemental estimate generally prepared in accordance with the Australian Cost Management Manuals from the Australian Institute of Quantity Surveyors.
- calculated the development costs in accordance with the definition of development costs in the S94A Development Contributions Plan 2007 of the Council of Kempsey Shire at current prices.
- included GST in the calculation of development cost.
- measured gross floor areas in accordance with the Method of Measurement of Building Area in the AIQS Cost Management Manual Volume 1, Appendix A2.

Signed: _____

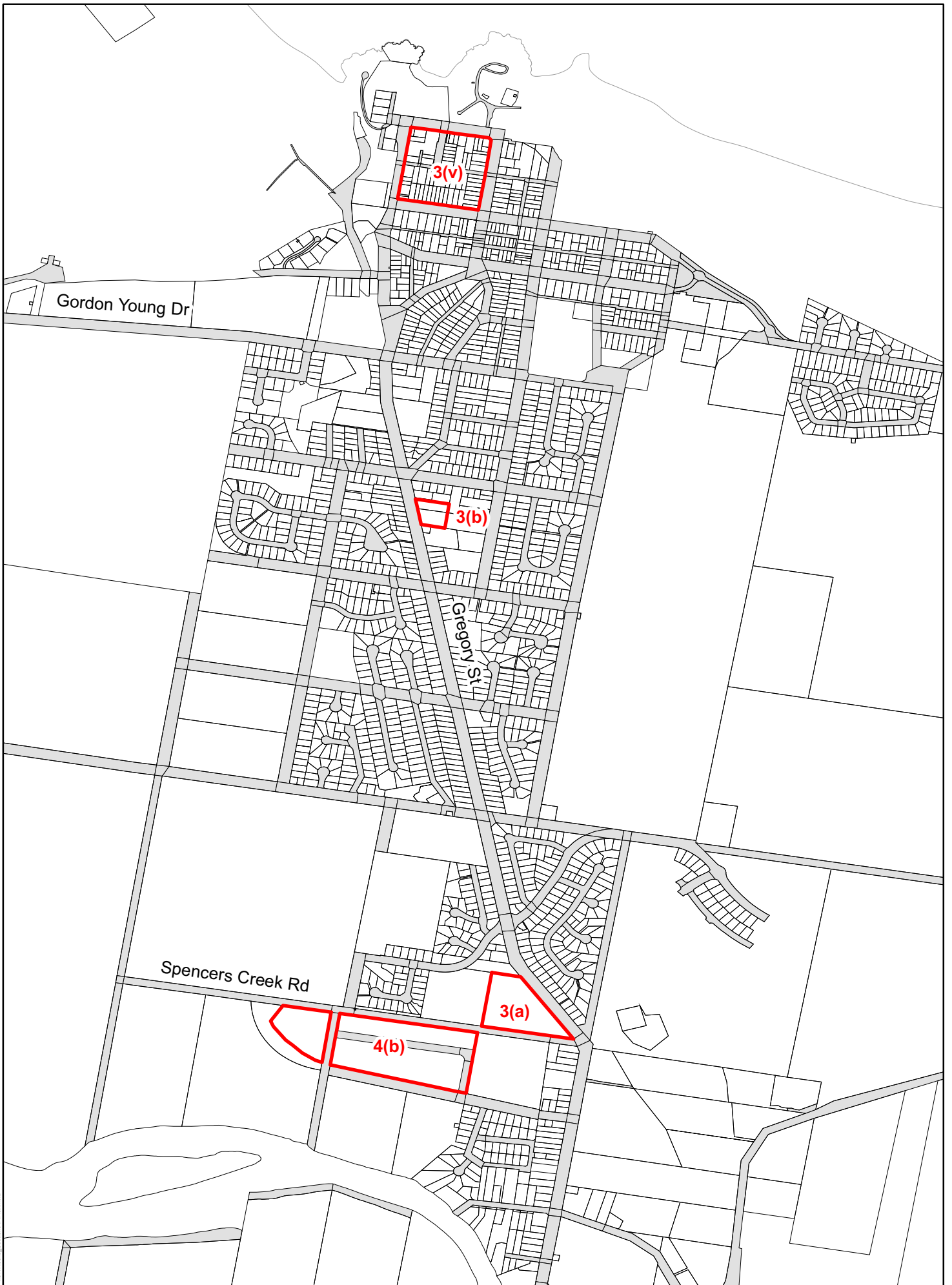
Name: _____

Position and Qualifications: _____

Date: _____



Appendix C
Land Subject to this Plan



SWRocks_Section94APlan.mxd

Scale @ A4 1:14 000

0 50 100 150

Metres

GRID

N

Map Projection: Universal Transverse Mercator
Horizontal Datum: Geocentric Datum of Australia 1954
Grid: Map Grid of Australia, Zone 56



Land subject to this plan



Cadastre

Spatial data courtesy of Kempsey Shire Council

South West Rocks Section 94A Plan

KEMPSEY SHIRE COUNCIL



Appendix D
Location of Works



C:\2211406\GIS\Map\2215406_LOCATION_OF_WORKS_20070610_B.mxd

<p>1:3000</p> <p>metres</p> <p>GRID</p> <p>Map Projection: Universal Transverse Mercator Historical Datum: Geocentric Datum of Australia 1954 Grid: Map Grid of Australia, Zone 56</p>	<p>LEGEND</p> <table border="0"> <tr> <td></td> <td>LOT BOUNDARY</td> <td></td> <td>PUBLIC DOMAIN FACILITY</td> </tr> <tr> <td></td> <td>ROAD RESERVE</td> <td></td> <td></td> </tr> </table>		LOT BOUNDARY		PUBLIC DOMAIN FACILITY		ROAD RESERVE		
	LOT BOUNDARY		PUBLIC DOMAIN FACILITY						
	ROAD RESERVE								

Spatial data courtesy of Kempsey Shire Council

Location of works - South West Rocks Section 94A Plan

KEMPSEY SHIRE COUNCIL



GHD Pty Ltd ABN 39 008 488 373

2/115 West High Street

Coffs Harbour NSW 2450

T: (02) 6650 5600 F: (02) 6652 6021 E: cfsmail@ghd.com.au

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Document Status

Rev No.	Author	Reviewer		Approved for Issue		
		Name	Signature	Name	Signature	Date
1	K.Burbidge	S.Lawer	<i>S.Lawer</i>	S.Lawer	<i>S.Lawer</i>	3/7/07
2	K.Burbidge	A. Spadaro	<i>A. Spadaro</i>	S.Lawer	<i>S.Lawer</i>	10/08/07
3	K. Burbidge	S.Lawer	<i>S.Lawer</i>	S.Lawer	<i>S.Lawer</i>	25/10/07