

## PENRITH CITY

### ORCHARD HILLS NORTH – AREA A

#### DEVELOPMENT CONTRIBUTIONS PLAN 2022 – PART 1: ADMINISTRATION

(Under Section 7.11 of the Environmental Planning and Assessment Act, 1979 amended)

[POST EXHIBITION DRAFT \(prepared 27 September 2023\)](#)

Adopted by council on [\[insert date\]](#)

Effective from on [\[insert date\]](#)

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# 1. CONTRIBUTIONS SUMMARY

## 1.1 EXECUTIVE SUMMARY

The City of Penrith is transforming into the New West and forms an important part of the Western Parkland City objective to reach a catchment of 1 million people by 2031. Penrith City's growing importance in the region reflects its proximity to the new Western Sydney International Airport, its key role as a transport and service hub and other major developments such as the Western Sydney Priority Growth Area, Penrith Health and Education Precinct and Sydney Science Park.

Penrith City is forecast to accommodate more than 40,000 new jobs over the 15 years to 2036. Over the same period, the resident population is expected to grow by around 57,000 to reach almost 260,000 (forecast.id data). This growth is based on a forecast of nearly 25,000 or 35% more dwellings. New dwellings are anticipated in various existing and new release areas, and the other established areas of the LGA.

To meet the infrastructure demands caused by this growth, Council has developed a new contributions framework comprising a suite of new and updated contributions plans. These plans set out the development contributions required to fund the program of new and augmented local infrastructure to accommodate the demand of the new residents and workers.

**Figure 1** shows the Orchard Hills North - Area A and Area B.

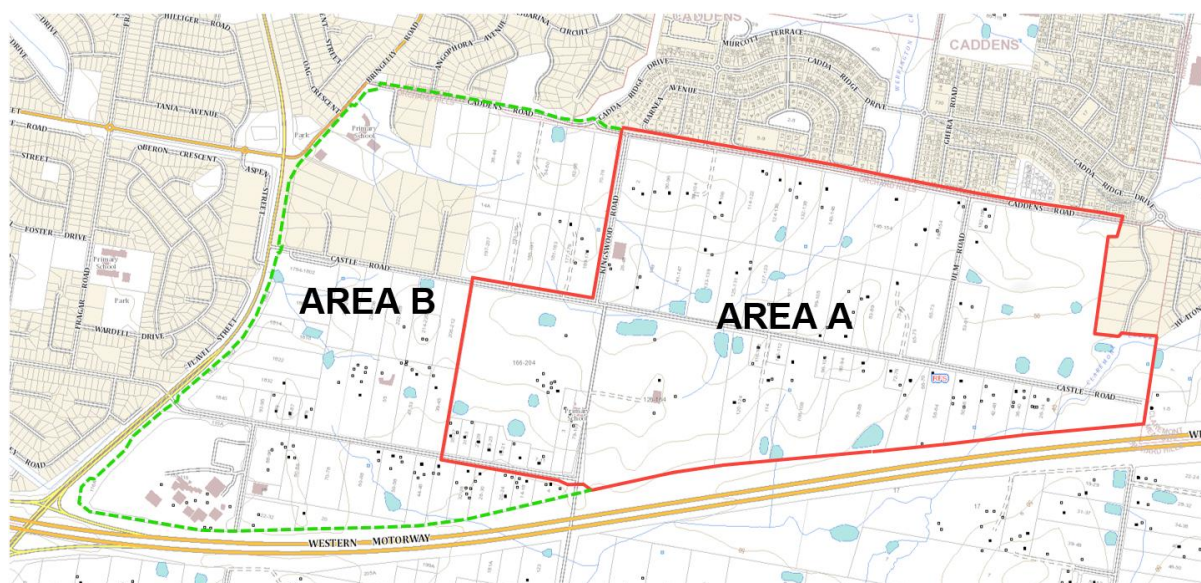
**This contributions plan (the Plan) only applies to Orchard Hills North – Area A.**

An additional contributions plan may be prepared for the adjoining Area B at the time that land is rezoned. Any discussion about Area B in this Plan is included for context only.

The contribution rates that apply to development in Area A are summarised in **Table 1** (subject to **Section 2.2.3**).

The contributions described in this Plan relate to local infrastructure and not State or regional infrastructure, which is funded through other state-based contributions.

**Figure 1 Orchard Hills North: Area A and Area B**



Source: SixMaps (Dec 2021)

**Table 1 Residential and Non-residential Contributions - Area A (June 23)**

Infrastructure category	Residential (\$ per Dwelling / Lot)*	Non-Residential (\$ per Ha NDA)
Transport	\$45,409	N/A
Open space, recreation and shared paths	\$48,692	N/A
District Open Space (Gipps St facility)	\$950	N/A
Water cycle management	\$30,246	\$505,870
Plan administration (1.5% of works)	\$598	\$2,792
Just Terms Acquisition (5% of Land costs)	\$3,807	13,286
<b>Total local infrastructure (\$)</b>	<b>\$129,702</b>	<b>\$521,948</b>

\*Assumes an occupancy rate of 3.0 persons per dwelling. See Table 3 for contribution rates for other types of other residential developments.

**Appendix A** of this Plan includes detailed schedules that provide more detail on how contributions for Area A have been determined to fund the infrastructure requirements: the individual items within each infrastructure category; their specific \$ costs; and the assumptions used.

## 1.2 ORCHARD HILLS NORTH

The **Orchard Hills North Rezoning Area** (known as ‘Area A’) is approximately 152 hectares of land, with a net developable area (NDA) of 101.15 hectares. The area includes Caddens Road to the north, together with elements of Kingswood Road, Castle Road and Frogmore Road in the west. The M4 Western Motorway forms the boundary to the south and Claremont Meadows residential lots to the east.

The land located immediately west of Area A and known as the **Orchard Hills North Structure Plan Area** (or ‘**Area B**’), is approximately 116 hectares in area. The Northern Road and Bringelly Road forms the western boundary to Area B, with the M4 Western Motorway forming the southern boundary.

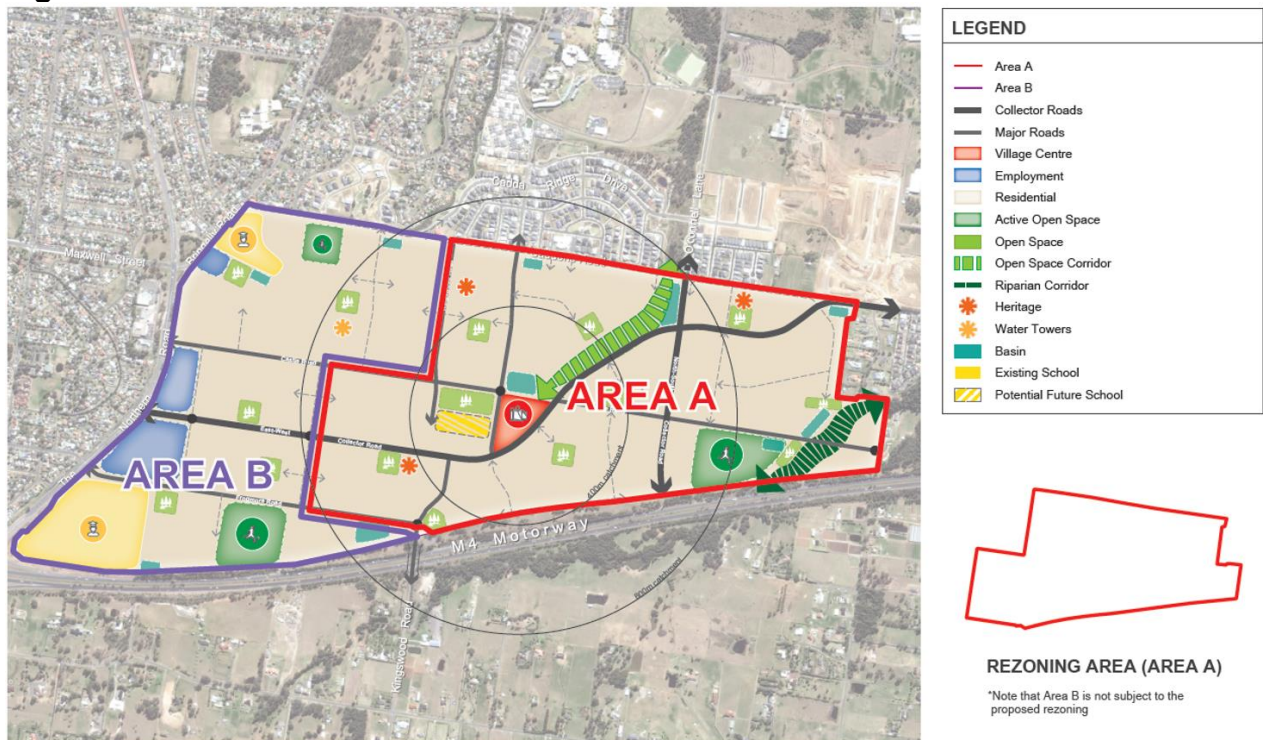
Area A is the subject of planning proposal / rezoning application for urban development and is expected to result in 1,729 residential dwellings and a proposed neighbourhood centre, comprising 6,000m<sup>2</sup> to 8,000m<sup>2</sup> of retail space, with capacity for an estimated 174 jobs.

Based on an average household size of 3.0 persons per dwelling, Area A is forecast to result in a population of 5,187 residents in a mix of 1,729 low and medium density housing types. This will create demand for new facilities and services both locally and district wide.

**It is important to note that this Plan only applies to new development in Area A.**

**Figure 2** below shows the Indicative Structure Plan for the Orchard Hills North Area A and Area B, and where different types of residential and non-residential development are expected to occur. Area B is **not** included in the current planning proposal but may be rezoned for development in the future.

**Figure 2 Orchard Hills North Area A and Area B: Indicative Structure Plan**



Source: Design and Planning (Nov 2022)

### 1.3 SUMMARY OF LOCAL INFRASTRUCTURE NEEDS

The additional population growth within Area A will generate new demand for a range of local and district infrastructure, including:

- open space and recreation facilities, such as sports fields, parks, playgrounds, walking trails and bike paths.

- district open space, specifically the Gipps Street facilities (Item L6490, as identified in Council's existing *District Open Space Facilities Contributions Plan*)
- traffic and transport management facilities, such as new roads, road upgrades and intersections, as well as bus shelters.
- water cycle management facilities such as detention basins, water quality devices and trunk drainage works.

Contributions of land, works and money from the developers of land in Area A will be a key source of funding for the new and upgraded infrastructure that is not otherwise provided directly by developers under conditions of consent.

The contributions that are made by developers under this Plan will be applied by Council to deliver the schedule of local infrastructure altogether valued at **\$217,990,409** (refer **Table 2** below and **Appendix A** for detailed Schedules).

**Table 2 Local infrastructure costs - Area A (June 23)**

Infrastructure category	Works Cost	Land Cost	Monetary Cost	TOTAL COSTS
Roads and transport	\$28,896,210	\$47,163,363	N/A	<b>\$76,059,573</b>
Local open space	\$27,791,129	\$53,767,160	N/A	<b>\$81,558,289</b>
District open space (Gipps St)	N/A	N/A	\$1,590,871	<b>\$1,590,871</b>
Stormwater drainage	\$24,291,074	\$26,877,649	N/A	<b>\$51,168,723</b>
Plan administration (1.5% of works)	N/A	N/A	\$1,230,585	<b>\$1,230,585</b>
Just Terms Acquisition (5% of Land costs)	N/A	\$6,390,409	N/A	<b>\$6,390,409</b>
<b>Total local infrastructure \$</b>	<b>\$80,978,413</b>	<b>\$134,198,581</b>	<b>\$2,821,456</b>	<b>\$217,998,450</b>

## 1.4 SUMMARY OF CONTRIBUTION RATES

### 1.4.1 RESIDENTIAL DEVELOPMENT

**Table 3** contains the section 7.11 contribution rate per dwelling / residential lot for Area A under this Plan (subject to **Section 2.2.3**).

**Table 3 Contributions per dwelling / residential lot - Area A (June 23)**

Residential development			
Local Infrastructure Item	\$ per studio or 1-bedroom dwelling or secondary dwelling or seniors living dwelling	\$ per 2-bedroom dwelling	\$ per 3+ bedroom dwelling or residential lot
Occupancy rate	1.5	2.0	3.0
Roads and transport	\$14,079	\$30,274	\$45,409
Local open space	\$24,346	\$32,461	\$48,692
District open space (Gipps St)	\$475	\$633	\$950
Stormwater drainage	\$15,123	\$20,164	\$30,246
Plan administration (1.5% of works)	\$299	\$399	\$598
Just Terms Acquisition (5% of Land costs)	\$1,904	\$2,538	\$3,807
<b>Total local infrastructure per dwelling</b>	<b>\$64,853</b>	<b>\$86,470</b>	<b>\$129,702</b>



### 1.4.2 NON-RESIDENTIAL DEVELOPMENT

This Plan also levies contributions on non-residential development in Area A catchment for stormwater management and plan administration costs.

**Table 4** contains the contribution rate per hectare (Ha) of net developable area (NDA) for non-residential developments in Area A under this Plan.

**Table 4 Non-residential development contributions per Ha NDA - Area A (June 23)**

Infrastructure category	Non-Residential (per Ha NDA)
Roads and transport	N/A
Open space	N/A
District open space (Gipps St)	N/A
Stormwater drainage	\$505,870
Plan administration (1.5% of works)	\$2,792
Just Terms Acquisition (5% of Land costs)	\$13,286
<b>Total local infrastructure \$ per NDA</b>	<b>\$521,948</b>

### 1.4.3 LATEST INDEXED RATES

Contributions in **Tables 1 to 4** are expressed in June 2023 dollars (June 23, the latest indexed contributions rates authorised by this Plan.

**Section 2.2.4** establishes how the rates to be levied must be indexed, with both works costs and land costs indexed by the CPI (All Groups - Sydney) published by the ABS.

At the time of payment, it is also necessary for monetary contributions to be updated for any further inflation that occurs from the consent date (see **Section 2.4.3**).

The latest contribution rates will also be published each quarter on Council's website and applicants and accredited certifiers can access the link to the latest contribution rates here.

### 1.4.4 ALLOWANCE FOR EXISTING DEVELOPMENT

An allowance for existing development is made in determining the contributions payable by a development such that existing development is provided with a credit for its existing local infrastructure needs. **Section 2.2.1** explains how to calculate the contribution for this adjustment.

### 1.4.5 DEVELOPMENT EXEMPT FROM CONTRIBUTIONS

This Plan does not apply to the following types of developments:

- development for the sole purpose of affordable or social housing.

- development for the sole purpose of the adaptive reuse of an item of environmental heritage.
- development for the purpose of infrastructure provided by Council or any other public authority.
- development exempted from s7.11 contributions by a direction made by the Minister for Planning under s7.17 of the EP&A Act.<sup>1</sup>
- development for the purpose of any form of seniors housing defined in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 that is provided by a social housing provider; and
- development that in Council's opinion does not increase the demand for the categories of public facilities and services addressed by this Plan (such as alterations and additions or a new dwelling where the original subdivision has already incurred contributions for the single lot).

Developers are encouraged to contact Council if they are unsure whether or not a contribution would apply to their development. Except for those forms of development outlined above, exemptions will only be considered at the request of the applicant and are at the full discretion of the Council. A request for exemption must be submitted in writing and should include justification and/or supporting documentation to support the request.

## 1.5 SUMMARY OF PAYMENT TIMING AND SETTLEMENT OPTIONS

Council's policy in relation to the timing of payments of monetary contributions is as follows:

- DAs involving subdivision works: payment to be made prior to release of a Subdivision Certificate (linen plan).
- DAs involving building works: payment to be made prior to the release of a Construction Certificate.
- Complying Development works: payment to be made prior to the works authorised in a Complying Development Certificate commencing.

More detail about the timing of payments is contained in **Section 2.4.1**.

Deferred payments are only allowed in special circumstances and on written request to Council, as outlined in **Section 2.4.4**.

Instead of paying monetary contributions, a developer may choose to provide, subject to the agreement of the Council, one or more infrastructure items identified in this Plan as works-in-kind or as a land dedication.

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<sup>1</sup> or the corresponding sections 94 and 94A of the EP&A Act that existed immediately before the commencement of the *Environmental Planning and Assessment Amendment Act 2017*. Refer to the DPE website for all current directions and exclusions.

Developers can also propose to provide another type of material public benefit (MPB) as means of satisfying development contributions required under the Plan, which is also subject to the agreement of Council. More detail on alternative settlement options is explained in **Section 2.5**.

A summary of the contributions rates and settlement options for different types of development is in **Figure 3**.

**Figure 3 Summary of contributions applicable to new development in Area A**





## 2. HOW TO USE THIS PLAN

### 2.1 ABOUT THE PLAN

#### 2.1.1 NAME OF THE PLAN

This Plan is called the Orchard Hills North - Area A Development Contributions Plan 2022.

#### 2.1.2 PURPOSE OF THE PLAN

Section 7.11 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* authorises councils and other consent authorities to require contributions from developers for local infrastructure as part of their development approvals. Councils and accredited certifiers may only impose a contribution if it is of a kind allowed by and determined in accordance with a contributions plan, such as this Plan.

The primary purpose of the Plan is to authorise:

- Council or a planning panel, when granting consent to a DA to carry out development in Area A; or
- an accredited certifier, when issuing a complying development certificate (CDC) for development in Area A, to impose conditions on the development consents which require a contribution to be made towards either/both:
  - the provision, extension or augmentation of public amenities and public services only where development is likely to require the provision of or increase the demand for those amenities and services; and
  - the recoupment of the cost of providing existing public amenities and public services within the area to which this Plan applies.

Other purposes of the Plan are as follows:

- To provide the framework for the efficient and equitable determination, collection and management of development contributions toward the provision of public amenities and public services generated by development within Area A.
- To determine the demand for public facilities generated by the incoming population to the Penrith LGA and ensure that development makes a reasonable contribution toward the provision of public amenities and public services that are required for that population.
- To ensure that the existing community is not unreasonably burdened by the provision of public amenities and public services required (either partly or fully) as a result of development in Area A.
- To ensure Council's management of development contributions complies with relevant legislation and guidelines and achieves best practice in plan format and management.

#### 2.1.3 STRUCTURE OF THE PLAN

This Plan provides summary information about the local infrastructure contributions payable, how to impose, pay and settle contributions, and other administrative matters.

**Appendix A** of the Plan provides more detail about the local infrastructure strategies for Area A, and how contributions have been determined to fund the infrastructure requirements.

This Plan is made up of two parts:

- Orchard Hills North- Area A Development Contributions Plan 2023 – Part 1: Administration which provides information about the local infrastructure contributions payable; where and when they apply, how to impose, pay and settle contributions and other administrative matters.
- Part 2: Glenmore Park Stage 3 Development Contributions Plan 2023 – Part 2: Technical Document provides details of the infrastructure to be provided (when, where and how much they will cost) and how contribution rates have been determined to fund the infrastructure requirements.

The two documents are critical to compliance with clause 212 of the EP&A Regulation and must be read together.

#### **2.1.4 PLAN COMMENCEMENT**

This Plan commences on the date on which public notice was given under 214(2) of the Environmental Planning & Assessment Regulation 2021 (EP&A Regulation) or the date specified in that notice if it is a different date.

#### **2.1.5 LAND AND DEVELOPMENT TO WHICH THE PLAN APPLIES**

This Plan applies to Area A only, for the purpose of residential and non-residential development (unless specifically exempted under **Section 1.4.5**), as identified in **Figure 1**.

Area A comprises approximately 152 hectares of land with a net developable area (NDA) of 101.15 hectares.

### **2.2 CALCULATING THE CONTRIBUTION**

#### **2.2.1 CONTRIBUTION FOR RESIDENTIAL DEVELOPMENT**

The contribution that applies to residential development is calculated using the rates shown in **Table 3**, less any allowances for assumed infrastructure demand arising from existing developments, if applicable.

For any new residential development, the number of existing dwellings needs to be deducted from the number of proposed dwellings to calculate the number of “net additional dwellings”. This helps determine the level of facilities required to service the net additional population, remove any “double counting”, and identify the level of infrastructure contribution to be paid per net additional dwelling or residential lot.

In Area A, there are 54 existing residential lots. This results in a total of 1,675 net additional dwellings.

## 2.2.2 CONTRIBUTION FOR NON-RESIDENTIAL DEVELOPMENT

The contribution that applies to non-residential development is calculated using the rates shown in **Table 4** applied to the NDA of the site.

There are no demand credits applicable to non-residential development however contributions are only incurred under this Plan on the original subdivision for non-residential development (and not changes of use, for example).

## 2.2.3 INDEXING CONTRIBUTION AMOUNTS IN THE CONDITION OF CONSENT

The contributions stated in a development consent or CDC are calculated using the indexed section 7.11 contribution rates determined in accordance with this Plan.

The component of the contribution rate for works and land schedule items will be indexed, subject to the Note below, as follows:

$$\frac{\$C_w \quad X \quad \text{Current CPI}}{\text{Base CPI}}$$

Where:

- \$C<sub>w</sub>** is the contribution rate for **works** and **lands** schedule items at the time of adoption of the Plan  
= \$ x per dwelling / lot for residential development, and  
= \$ x per hectare of NDA for non-residential development
- Current CPI** is the most recent quarterly CPI as published by the ABS at the time of the development consent
- Base CPI** is the CPI in the quarter of the date of adoption of this Plan, or the previous quarter if this is not yet published

**Note:** The contribution amount in the consent will not be less than the contribution amount specified at the date of the adoption of this Plan.

If the contributions are not paid within the quarter in which consent (or the CDC) is issued, the contributions payable will be adjusted further in accordance with **Section 2.4.3**.

The current indexed contributions are published by Council on its website and are also available from Council offices.



## **2.3 IMPOSING THE CONTRIBUTION**

### **2.3.1 MONETARY CONTRIBUTIONS**

This Plan authorises the Council or a planning panel, when granting consent to a DA to which this Plan applies, to impose a condition under section 7.11 of the EP&A Act requiring the payment of a monetary contribution to the Council towards:

- the provision of public amenities and public services as specified in the works schedule to meet the demands of the development; or
- the recoument of the cost of public amenities and public services previously provided in advance of development within the area.

This Plan requires the Council or an accredited certifier, when determining an application for a CDC relating to development to which this Plan applies, to impose a condition under section 7.11 of the EP&A Act requiring the payment of a monetary contribution towards:

- the provision of public amenities and public services as specified in the works schedule to meet the demands of the development; or
- the recoument of the cost of public amenities and public services previously provided in advance of development within the area.

### **2.3.2 LAND CONTRIBUTIONS**

This Plan authorises the Council or a planning panel, by imposition of a condition of development consent, to require in connection with any development on land to which this Plan applies (and in addition to any monetary contribution that may be sought) the dedication free of cost to the Council of any part of the development site that is land that is to be acquired under this Plan.

The area of land that may be required in the consent shall not exceed the area equivalent to the monetary contribution otherwise authorised by this Plan.

For the purposes of this section, the value of the land is to be calculated in accordance with the value of the land as indexed by CPI in accordance with this Plan.

Council will, wherever appropriate, require developers to dedicate land free of cost for the facilities identified in this Plan. Where the development does not or cannot provide the full (land) area required as a contribution, the shortfall will be required as a monetary contribution. The contribution rates included in this Plan reflect the monetary contribution required where land is not dedicated free of cost.

Where the value of the land exceeds the monetary development contribution otherwise authorised by this Plan, the developer may offer to enter into a Voluntary Planning Agreement (VPA) dealing with an appropriate settle-up in exchange for the dedication of the remainder.

### **2.3.3 CAP ON CONTRIBUTIONS FOR RESIDENTIAL DEVELOPMENT**

The Minister for Planning has issued a Direction in relation to the maximum contribution amounts that could be imposed on DAs or CDCs for residential development as a condition of consent.

Under the current policy, a capped amount of \$30,000 per dwelling or residential lot applies to designated greenfield areas. At this stage, Glenmore Park Stage 3 is not a designated greenfield area and a capped amount of \$20,000 per dwelling or residential lot applies, unless the Plan has been reviewed by IPART and Council has implemented any subsequent advice given by the Minister.

An essential works list applies (excluding any capital works for community facilities) when councils are seeking local infrastructure contributions above these caps.

### **2.3.4 OBLIGATIONS OF ACCREDITED CERTIFIERS**

A section 7.11 contribution condition would not generally be required to be imposed on a CDC unless the complying development will or is likely to require the provision of or increase the demand for the specific local infrastructure included in this Plan.

For example, a new dwelling on a vacant lot of land would not be subject to section 7.11 contributions because the contributions would likely have been imposed and paid at the subdivision stage. However, a secondary dwelling CDC would be subject to a section 7.11 contribution under this Plan, because the development increases the demand for local infrastructure (as the assumed population of the lot is increased) beyond the demand attributable to the original lot.

#### **Complying Development Certificates**

In accordance with section 4.28(9) of the EP&A Act, an Accredited Certifier must impose a condition on any CDC issued on the land to which this Plan applies that requires a contribution to be paid in accordance with the provisions of this Plan. The monetary amount and timing of payment are to be in accordance with the provisions of this Plan.

#### **Procedure for determining the contribution amount**

The procedure for an Accredited Certifier to determine the amount of the section 7.11 monetary contribution for complying development is as follows:

1. If, and only if specified in writing in the application for a CDC, the applicant has requested a credit under section 7.11(6) of the EP&A Act or an exemption for part or the whole of the development under **Section 1.4.5** of this Plan, the Accredited Certifier must:
  - (a) make a request in writing to the Council for the Council's advice on whether the request is granted, or the extent to which it is granted; and
  - (b) in calculating the monetary contribution, comply with the Council's written advice or if no such advice has been received prior to the granting of the CDC, refuse the applicant's request.

2. Determine the unadjusted contributions in accordance with the rates included in **Tables 3 or 4** of this Plan, taking into account any exempt development specified in **Section 1.4.5** and any advice issued by the Council under paragraph 1(b) above.
3. Adjust the calculated contribution in accordance with **Sections 2.2.4** and **2.4.3** to reflect the indexed charge for the provision of infrastructure.

## Construction Certificates

In accordance with clause 20(b) of the *Environmental Planning and Assessment (Development Certification and Fire Safety Regulation 2021* (EP&A (Certification) Regulation) an Accredited Certifier issuing a Construction Certificate for building work or subdivision work to ensure that each condition requiring the payment of a monetary contribution before work is carried out has been complied with in accordance with the CDC or Development Consent.

The Accredited Certifier must ensure that the applicant provides a receipt (or receipts) confirming that contributions have been fully paid and copies of such receipts must be included with copies of the certified plans uploaded to the Planning Portal in accordance with clause 13(2) of the EP&A (Certification) Regulation. Failure to follow this procedure may render such a certificate invalid and expose the certifier to legal action.

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

## 2.4 PAYING THE CONTRIBUTION

### 2.4.1 TIMING OF PAYMENTS

At the time of payment, it will be necessary for monetary contribution amounts to be updated in accordance with the relevant indexes (see **Section 2.2.4** for the indexes applicable to contribution rates in the condition of consent or CDC and **Section 2.4.3** for any further adjustment required at the time of payment).

The timing for payment of contributions is as follows:

- Development Applications involving subdivision works: payment to be made prior to release of a Subdivision Certificate (linen plan).
- Development Applications involving building works: payment to be made prior to the release of a Construction Certificate.
- Complying Development works: payment to be made prior to the works authorised in a Complying Development Certificate commencing.

**Note:** Where a ‘superlot’ (that is, an allotment of land that can be further subdivided into more residential allotments) is proposed to be created through a proposed subdivision of land, a condition requiring contributions to be paid under this Plan will not be imposed on the development consent in respect of the subdivision of that lot. Instead, contributions

required under this Plan will be imposed as a condition of development consent for the first subdivision of the superlot into finals lots, or for any dwellings on the superlot.

#### **2.4.2 MEANS OF PAYING CONTRIBUTIONS**

Payment may be made by any means acceptable to Council provided that if the payment is not by cash or bank cheque then:

- any costs or commission payable by Council on the transaction or its collection must also be paid by the applicant; and
- the payment shall not be deemed to be received until Council's bankers acknowledge that the funds are cleared.

#### **2.4.3 CONTRIBUTION ADJUSTMENT FOR INFLATION AT TIME OF PAYMENT**

The contributions stated in a development consent are calculated on the basis of the indexed section 7.11 contribution rates determined in accordance with this Plan. If the contributions are not paid within the quarter in which consent is granted, the contributions payable will be adjusted and the amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment in the following manner:

$$\frac{\$C_P \times \text{Current CPI}}{\text{Base CPI}}$$

Where:

**\$C<sub>P</sub>** is the contribution amount in the development consent.

**Current CPI** is the CPI for the quarter immediately before the time the contribution amount is paid.

**Base CPI** is the CPI for the quarter immediately before the date the development consent was issued.

The current contributions are published by Council on its website and are also available from Council offices. Should the Council not validly publish the applicable contribution rates, the rate applicable will be calculated in accordance with the most recent validly published rate.

**Note:** The contribution payable will not be less than the contribution specified on the development consent.

#### **2.4.4 DEFERRED OR PERIODICAL PAYMENTS**

Council will consider any request for deferment of contributions on its merits however, the developer must make a written application.

Deferred or periodic payments may be permitted in the following circumstances:

- compliance with the provisions of **Section 2.4.1** is unreasonable or unnecessary in the circumstances of the case; or
- where the applicant intends to make a contribution by way of a planning agreement, works-in-kind or land dedication in lieu of a cash contribution and Council and the applicant have a legally binding agreement for the provision of the works or land dedication; or
- there are circumstances justifying the deferred or periodic payment of the contribution.

Council will consider whether deferred or periodic payment of the contribution will prejudice the timing or the manner of the provision of public facilities included in the works program.

If Council grants such a request it is conditional upon the applicant providing a suitable bank guarantee and deed of agreement consistent with Council's accounting practices for such scenarios.

A period for deferral of a contribution will be agreed between the applicant and Council prior to preparation of the bank guarantee. The period may be extended in circumstances acceptable to Council.

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

$$G = C \times (1 + r)^P$$

Where:

**G** is the amount of the Bank Guarantee.

**C** is the contribution owing at the time the guarantee is lodged with Council.

**r** is the interest rate applicable on the last day of the quarter of the 90-day bank bill swap rate, plus 1%; and

**P** is in years and reflects the number of years that the bank guarantee is expected to be held.

The guarantee will be terminated when the liability is met by the payment of cash or transfer of land or works or Council advises that the guarantee is no longer required.

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

If contributions are not paid by the agreed date the Bank Guarantee may be called up by Council.

## 2.5 ALTERNATIVES TO PAYING CONTRIBUTIONS

Council encourages and may accept an offer by the applicant to provide an "in-kind" contribution (i.e., the applicant completes part, or all of the works identified in this Plan) or

may accept an offer by the applicant to provide a material public benefit (including land dedication), in lieu of the applicant paying a monetary contribution under this Plan.

While an offer of settlement of contributions in-kind is encouraged, Council's decision to accept such an offer is solely at its discretion, having regard to the matters for consideration included in this clause and Council's Developer Infrastructure Agreements Policy. Applicants who may be considering an in-kind contribution are encouraged to consult this policy.

Any works-in-kind or material public benefit offer by the applicant may be made either before or after the grant of a development consent, but prior to the payment of the monetary contribution for the development. Where the offer is made before the grant of development consent, the applicant's request:

- may be contained in the relevant DA; or
- may constitute an offer to enter into a Planning Agreement relating to the development accompanied by the draft agreement (see **Section 2.5.3** below).

#### **2.5.1 DETERMINING THE VALUE OF THE WORKS-IN-KIND OR LAND DEDICATION**

The value of the contribution credit applying to offers of works-in-kind (or land dedication) shall be the value of that work (or land) shown in the works schedule included in this Plan at the time the offer is made (including any adjustment using the indices listed in **Section 2.2.4**).

The value of the contribution credit applying to another type of material public benefit offered by the applicant 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.

A valuation of the works will be required to be prepared by the applicant on completion, as the work will form part of Council's asset register.

#### **2.5.2 PROPOSALS MUST BE AGREED BY COUNCIL**

Council will require the applicant to enter into a written agreement for the provision of the works. This may be either by way of a works-in-kind agreement or the execution of a planning agreement in accordance with section 7.4 of the EP&A Act. Where the offer is included in a draft planning agreement, Council will require the applicant to enter into that agreement.

Acceptance of any such alternative is at the sole discretion of Council. Council may review the valuation of works or land to be dedicated and may seek the services of an independent person to verify their value. In these cases, all costs and expenses borne by the Council in determining the value of the works or land will be paid for by the applicant.

Once an agreement has been reached between Council and the applicant about the works cost and subject to any other conditions included in the agreement, the applicant may undertake the works.

The applicant will remain liable for any cost overruns in the execution of the work. Similarly, any economies in construction costs will flow to the developer, provided that the quality of the work is not diminished.

### **2.5.3 PLANNING AGREEMENTS**

Section 7.4 of the Act allows the negotiation of planning agreements between councils, developers, and/or other planning authorities for the provision of public purposes in connection with a DA.

Planning Agreements may be used to pay money, dedicate land, carry out works, or to provide other public benefits and may be an alternative means for settling a requirement to pay a Section 7.11 contribution.

Council has adopted a Planning Agreements Policy that outlines its requirements in relation to the preparation of Planning Agreements. Applicants who may be considering a Planning Agreement as an alternative to satisfying a Section 7.11 contribution are encouraged to consult Council's Planning Agreements Policy.

### **2.5.4 POLICY ON SURPLUS CONTRIBUTIONS MADE BY A DEVELOPER**

The clause applies in the circumstance where a developer has made total contributions under this Plan that exceed the developer's obligations under this Plan.

If no further land within Area A is to be developed and all development contributions owing to Council by a developer have been paid, any surplus contributions will either be:

- recognised in the calculation of development contributions for any future development in the City of Penrith which the developer may undertake.
- reimbursed by Council.
- or a combination of the above.

The decision on whether to transfer and/or settle contribution credits will be at Council's discretion and in accordance with its WIK/MPB or Planning Agreements policies.





## **3. OTHER ADMINISTRATION MATTERS**

### **3.1 RELATIONSHIP TO OTHER CONTRIBUTION PLANS**

The following contributions plans adopted by the Council and in force at the time that this contribution plan commenced do not apply to development to which this plan applies:

- Cultural Facilities Development Contributions Plan (2003)
- Penrith City District Open Space Facilities Development Contributions Plan (2007)
- Penrith City Local Open Space Development Contributions Plan (2007)

This Plan does not limit or otherwise affect any requirements for the payment of special infrastructure contributions (SICs) pursuant to Subdivision 4 of Division 7.1 of Part 7 of the EP&A Act.

### **3.2 SAVINGS AND TRANSITIONAL ARRANGEMENTS**

A DA or a CDC which has been submitted prior to the adoption of this Plan but not determined shall be determined in accordance with the provisions of the Plan which applied at the date of determination of the application. The Plan will apply to DAs determined or CDCs issued on or after the date to which the Plan was made.

### **3.3 POOLING OF CONTRIBUTIONS FUNDS**

Council's ability to forward fund the infrastructure in this Plan is very limited. Consequently, infrastructure provision is largely contingent upon the availability of contributions funds.

To provide a strategy for the orderly delivery of the public amenities and public services, this Plan authorises monetary contributions paid for different purposes in accordance with the conditions of various development consents and CDCs authorised by this Plan and any other contributions plan approved by the Council to be pooled and applied progressively for those purposes.

The priorities for the expenditure of pooled monetary contributions under this Plan are the priorities for works as set out in the works schedules in Appendix A and Orchard Hills North Area A – Part 2: Technical Document)

Council's decision whether to pool and progressively apply contributions funds, will depend on it being satisfied that such action will not unreasonably prejudice the delivery within a reasonable time, of the purposes for which the money was originally paid.

### **3.4 ACCOUNTABILITY AND ACCESS TO INFORMATION**

Council is required to comply with a range of financial accountability and public access to information requirements in relation to section 7.11 contributions. These are addressed in Divisions 4 of Part 9 of the EP&A Regulation and include:

- maintenance of, and public access to, a contributions register.
- maintenance of, and public access to, accounting records for contributions receipts and expenditure.
- annual financial reporting of contributions; and
- public access to contributions plans and supporting documents.

These records are available on Council's website and, where required, through the NSW Planning Portal.

### 3.5 REVIEW OF THE PLAN

Pursuant to 215(5) of the EP&A Regulation, Council may make certain minor adjustments or amendments to the Plan without prior public exhibition and adoption by Council. Minor adjustments could include minor typographical corrections and amendments to rates resulting from changes in the indexes adopted by this Plan.

Council intends to otherwise review its contribution plans at least every three years with any material amendments to be made to the development yield, proposed infrastructure items or their cost of provision, to be subject to Plan amendment and public exhibition.

### 3.6 DICTIONARY

Except where indicated in this section, the definitions of terms used in this Plan are the definitions included in the EP&A Act, EP&A Regulation and the relevant *Environmental Planning Instrument* applying to Area A.

In this Plan, the following words and phrases have the following meanings:

**ABS** means the Australian Bureau of Statistics.

**Affordable Housing** means Housing for very low, low and moderate income households (As defined by State Environmental Planning Policy (Housing) 2021, Chapter 2 – Affordable Housing)

**Affordable Rental Housing** means affordable housing managed by a community housing provider and rented to very low, low or moderate income households at no more than 30% of the households gross income.

**Avoided Lands Affordable Housing** means Housing for very low, low and moderate income households (As defined by State Environmental Planning Policy (Housing) 2021, Chapter 2 – Affordable Housing)

**Affordable Rental Housing** means affordable housing managed by a community housing provider and rented to very low, low or moderate income households at no more than 30% of the households gross income.

**Avoided Lands** means land that has important biodiversity values and has been identified as “avoided land” on the State Environmental Planning Policy (Biodiversity and Conservation) 2021 Strategic conservation Land map,

**CDC** means complying development certificate.

**Council** means Penrith City Council.

**CPI** means the Consumer Price Index (All Groups - Sydney) published by the ABS.

**DA** means development application.

**DPE** means NSW Department of Planning and Environment.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979*.

**EP&A Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**Ha** means hectare.

**IPART** means Independent Pricing and Regulatory Tribunal.

**LGA** means local government area.

**MPB** means material public benefit, which is the provision of public amenities or services that are not within the nominated works schedule of the contributions plan.

**NDA** means Net Development Area.

**Net Developable Area** means land that is to be occupied by development, including internal streets, but excluding the following land:

- a) land set aside for open space and recreation, community facilities, transport management facilities, or water cycle management facilities and to be acquired under this Plan or another contributions plan prepared under section 7.11 of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- b) land occupying half the width of roads adjoining open space areas and public school provided or to be provided under this Plan or another contributions plan prepared under section 7.11 of the EP&A Act.
- c) biodiversity/environmental conservation area.
- d) riparian corridors (core and buffer zones).
- e) a government school (within the meaning of the Education Act 1990).
- f) a tertiary institution, including a university or TAFE establishment, that provides formal education and is constituted by or under an Act.
- g) an emergency services facility;
- h) a health services facility owned and operated by a public authority.
- i) existing roads to be included as part of the proposed road network.

- j) an easement for an above-ground electricity transmission line.
- k) a public transport corridor (other than a road corridor).
- l) a public utility undertaking roads or other public amenities or public services, in connection with which development contributions have been imposed under Section 7.11 or Section 7.12 of the Act or may be imposed in accordance with a contributions plan approved under Section 7.18 of the EP&A Act
- m) roads or other infrastructure in connection with which SICs have been, or may be, imposed in accordance with Section 7.24 of the EP&A Act; and
- n) land identified in this Plan's *Technical Appendix* as being excluded from NDA.

**Social Housing** means rental housing provided to very low to low-income households by not-for-profit or government organisations. Social housing includes public, Aboriginal and community housing.

**Works schedule** means the schedule of the specific public amenities and public services for which contributions may be required as set out in Appendix A of this Plan.

**Planning Agreement** means a Voluntary Planning Agreement referred to in section 7.4 of the EP&A Act.

**SIC** means Special Infrastructure Contribution.

### 3.7 PLAN REFERENCES

Department of Planning & Environment, *Planning Services – Gateway Determination Report*, Orchard Hills North, 2019.

*Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*, as amended.

*Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2017*.

Greater Sydney Commission, *Western City District Plan*, March 2018.

NSW Government, *A Plan for Growing Sydney*, 2014.

Greater Sydney Commission, *Greater Sydney Regional Plan - A Metropolis of Three Cities*, March 2018

Penrith City Council, *Economic Development Strategy – Building the New West*, January 2017.

Penrith City Council, *Penrith Community Profile 2018*, p 24.

Population and household forecasts, 2016 to 2036, prepared by id., the population experts, December 2017.

Orchard Hills North Indicative Structure Plan, Design and Planning, 'Indicative Master Plan' - Rev Z, November 2022

Orchard Hills North Detailed Structure Plan, Design and Planning, 'Indicative Master Plan' - Rev F, November 2022

Orchard Hills North Urban Design Report, Design & Planning, January 2023

Orchard Hills North Open Space Strategy, Place Design Group, January 2023.

Orchard Hills North Traffic Management and Accessibility Plan, SCT Consulting, January 2023.

Orchard Hills North Flood & Stormwater Management Strategy, J. Wyndham Prince, February 2023.

# APPENDIX A: Technical Appendix