



			<h1>ANNEX M</h1>	
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**Section 94**  
**Contributions Staging**

19 November 2008

General Manager  
Coffs Harbour City Council  
Locked Bag 155  
COFFS HARBOUR NSW 2450

Rothwell Boys Pty Ltd  
Level 10, 61 Lavender St  
Milsops Point NSW 2061  
PO Box 55  
Cammeray NSW 2062

Attention: Mr Tony Watkins

T +61 2 9829 5000  
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www.wintin.com.au

Dear Tony,

ABN 35 536 670 698

RE: STAGED SECTION 94 PAYMENTS FOR THE GLADES ESTATE -  
LOTS 1 AND 2 DP 725785, PACIFIC HIGHWAY, MOONEE -

Reference is made to your letter dated 11 July 2008 and to your recent telephone conversations with Steve O'Connor from Environmental Resources Management Pty Ltd (ERML), where the Section 94 levies relevant to the above proposed residential estate have been discussed and in particular the form that conditions should take related to the project approval we are seeking from the Minister for Planning.

In accordance with our discussions with the Department of Planning (DoP) we are keen to clarify with Council the staging aspect of the payment of Section 94 levies associated with this project, so there is no confusion when the Minister issues the approval which will contain conditions relevant to the payment of appropriate Section 94 levies.

To this end we have prepared the attached table (Table 1), which sets out the cash payments required in the context of the various stages of the project. You will note that the attached table also identifies the works/ dedication of land proposed at various stages and the corresponding credit to be recognised.

As you are aware your letter concludes that the total contributions currently payable for the 524 lot subdivision amounts to \$12,062,078.48. Rothwell Boys Pty Ltd, is prepared to pay the full amount of this total contribution, in cash and in authorised works/ dedication of land, at various stages throughout the project. However, some flexibility in the form/ timing of the payments is required to achieve practical and viable outcomes in the interests of all parties.

Given that the northern collector road is likely to be required to be constructed at the commencement of the project, we are prepared to forward fund cost of these works (which includes investigations, approvals, design, construction and the dedication of the land within the road reserve as a public road at no cost to Council) at an estimated cost of \$3,060,697 (as per the Moonee Developer Contributions Plan 2008 adopted by Council). This offer is being made on the understanding that a credit is recognised for the contributions payable over and above the 522 lots, (524 lots less 2 existing lots), required for the construction of the northern collector road.

As we would, in the normal course of events, be required to pay the northern collector road contribution of \$4,167.79 for each of the proposed 522 lots in The Glades Estate, a total contribution of \$2,175,586.38 should therefore be paid. However, in forward funding the northern collector road estimated to cost \$3,060,697, we will be paying an additional \$885,110.62, which Council can expect to collect from other developers in future. In order to ensure that northern collector road is constructed within the budget specified in the adopted Contributions Plan, it may be necessary to amend the scope of works outlined in the Contributions Plan. Alternatively, if these works cost less than the estimated \$3,060,697, an adjustment will be made to reflect this cost saving.

As reflected in the Table 4 attached, this credit would be accrued in association with the first three stages, as would the credit for the construction works and land dedication involved in the active recreation node (known as the western recreation node). The western recreation node has an estimated cost (including the value of the land to be dedicated to Council) of \$329,352.75 as per Council's adopted Contributions Plan.

The other land to be dedicated in association with the first three stages is the land currently zoned Open Space 6(a) under Council's Local Environmental Plan. While this land does not have a stated value in Council's Contributions Plan, we have placed a value of \$500,000 on this land based on a reasonable land value of \$5.55 cents per square metre. Council's Contributions Plan uses a land value of \$26.61 per square metre for land to be acquired for road construction, however it is recognised that the land zoned Open Space 6(a) adjoins Skimmers and Moonee Creeks and is generally within the proposed buffer area to these creeks. A significantly reduced land value per square metre has therefore been used to derive the value of this nine hectare area of land.

In association with stage 6 it is proposed to construct the passive recreation node known as the eastern recreation node. The estimated cost of the construction/ dedication of land in Council's Contributions Plan for a boat launching ramp and associated facilities is \$479,853 (this assumes a land value of \$209,853 and a construction cost of \$270,000 as per the Contributions Plan) in the vicinity of the eastern recreation node. As this boat launching facility has now been removed from the proposed development and substituted with a standard neighbourhood playground the revised cost is assumed to be \$329,352.75. This will result in Council eventually collecting over \$150,000 more in local open space levies than will be expended.

These are the only works/ dedications for which a credit is being sought. Therefore while Council will receive approximately \$350,000 less than anticipated in the adopted Contributions Plan as a consequence of the recognition of the land zoned Open Space 6(a) being dedicated to Council, it will still ultimately receive in excess of the estimated \$5.6 m required for the acquisition of the District Open Space land to be developed as a District Sportsground and District Park complex on the western side of the Pacific Highway. It will also ultimately receive in excess of \$1.5 m to be put towards the development of this District Sportsground and District Park over this land. We considered it reasonable for the credit being sought, approximately 6%, to be absorbed from contributions allocated for District Sportsground and District Park. We expect that the total Section 94 contributions will, over time, increase as a result of anticipated higher yields.

We anticipate that we will incur costs in excess of \$500,000 in forward funding the northern collector road, which will not be recognised or reimbursed in any way. While this cost is a burden we will bear, Council will benefit from the early construction of the northern collector road as it will effectively "open up" the potential for over 700 allotments to be developed in the northern Moonee Release Area which will in turn generate significant revenues for Council in terms of Section 94 payments and other infrastructure payments (eg) water and sewer. These funds will assist Council in meeting its financial obligations for infrastructure headworks it has borrowed to finance these works in advance of development being constructed.

We consider our proposal will amicably resolve all relevant outstanding matters associated with the planning of this release area. We look forward to your prompt and favourable consideration.

Please do not hesitate to contact me if you require any additional information.

Yours sincerely,  
for Rothwell Boys Pty Ltd

  
Bill Sarkis  
Director – Residential Estates

Table 1 Staging of Section 94 Contributions for The Glades Estate Moonee

Stage	No. Lots	Value of Contribution at \$23,107.43/Lot	Value of Works/Dedication	Cash	Credit/Debit
1,2& 3	147	\$3,396,792.21	<ul style="list-style-type: none"> <li>• Western Recreation Node \$329,352.75</li> <li>• Land Zoned Open Space (9ha) \$300,000.00</li> <li>• Northern Collector Road \$3,060,697.00</li> </ul>	0	+\$493,257.54
4	47	\$1,086,049.21	-	\$592,791.67	0
5	51	\$1,178,478.93	-	\$1,178,478.93	0
6	61	\$1,409,553.23	Eastern Recreation Node \$329,352.75	\$1,080,200.48	0
7	48	\$1,109,156.64	-	\$1,109,156.64	0
8	48	\$1,109,156.64	-	\$1,109,156.64	0
9	50	\$1,155,371.50	-	\$1,155,371.50	0
10	42	\$970,512.06	-	\$970,512.06	0
11	28	\$647,008.04	-	\$647,008.04	0
<b>Total</b>	<b>522</b>	<b>\$12,062,078.46</b>	<b>\$4,219,402.50</b>	<b>\$7,842,675.96</b>	<b>0</b>

# COFFS HARBOUR CITY COUNCIL



WINTEN

8 December 2008  
Our Ref:2099402

12 DEC 2008

PROPERTY GROUP

Mr Bill Sarkis  
Rothwell Boys Pty Ltd  
PO Box 55  
CAMMERAY NSW 2450

Dear Bill,

## RE: STAGED SECTION 94 CONTRIBUTION PAYMENTS FOR THE GLADES ESTATE

Thank you for your letter of 19 November 2008 relating to section 94 payments for the Glades Estate.

In relation to your proposal to forward fund the cost of the collector road, this would require a legally binding agreement setting out the parameters of the arrangement. This agreement would be required to be authorised by Council.

The cost of the northern leg of the collector road as included in the Moonee Contributions Plan is approximately \$3,579,890. This amount recognises that construction of sections of the northern leg of the collector road have either been completed or are under construction.

The local road facilities contribution provides for the construction of an 8 metre wide road, and a 17 metre road reserve. As the collector road is to be an 11 metre width in a 20 metre road reserve, the additional costs of this are included in the district road contributions calculations.

As previously advised a credit against contributions payable towards roads included in the Moonee contributions plan could be made available. Contributions levied for facilities other than roads would not be subject to an offset as this would likely jeopardise the provision of those facilities. It should also be noted that Council has an existing agreement with a developer who forward funded the round about on Moonee Beach Road. This agreement requires a percentage of each contribution collected towards roads to be reimbursed to the developer. This amount is in the order of \$500 per lot.



The current contributions are \$4,276.04 for the northern collector road, and \$9,818.31 for District transport facilities. Therefore total contributions per lot towards roads and traffic facilities are currently \$14,094.35 per lot.

The contributions plan makes no provision for the purchase of open space land within the Glades Estate development site. The Moonee Development Control Plan requires dedication at no cost of the recreation land. The Moonee DCP provides for active recreation facilities in the form of neighbourhood parks to be sited on land with no development potential.

The land to be purchased which is included in the contributions plan relates to creek frontage for provision of the coastal walk only on other land parcels within the Moonee development area.

In relation to the land currently zoned 6(A) Open Space, there is currently an application with the Department of Planning for rezoning of this land to 7(A) Environmental Protection. The contributions plan makes no provision for the purchase of this land.

In relation to the comments regarding additional lot yield, Council acknowledges that the Glades Estate's proposed lot yield is in excess of that predicted by the Moonee DCP. However several other development parcels have fallen short of the anticipated yields, and overall the projected lot yield for the Moonee release area is within 3 lots of the targets set by the DCP.

We trust the above provides a clearer picture of the operation of the Moonee Developer Contributions Plan.

Please feel free to contact the writer should you wish to discuss this further.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Tony Mulkins', with a stylized flourish at the end.

Tony Mulkins  
Developer Contributions Co-ordinator



			<h1>ANNEX N</h1>	
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**RFS Regulation Extract**



### 3.3 Exceptional circumstances for APZs

Reduced APZs and the use of adjoining lands for meeting APZ requirements will only be permitted in exceptional circumstances based on the merits of the particular development.

It is not possible to be definitive about the full range of such circumstances. However, through previous Land and Environment Court cases and experience it is possible to give examples of the type of situations that could be considered exceptional.

Consideration is on a case-by-case basis and the applicant should provide clear evidence that, because of the circumstances of the case e.g. location or type of use, strict prescriptive compliance is unreasonable and unnecessary.

For exceptional circumstances to apply, the following principles should be demonstrated:

- the existing form of development will obtain a better bush fire risk outcome than if the development did not proceed (eg through increased construction standards);
- the building line should be no closer to the hazard than neighbouring properties;
- the extensions should be no closer to the hazard than the existing building footprint; an upgrade of existing facilities may be required; and
- the proposal is an infill arrangement and site constraints do not allow APZ requirements to be met.

An increase in residential densities is not, by itself, considered an exceptional circumstance.

#### (a) Reduced APZ

Where the required APZ cannot be provided, or a reduction is proposed, the applicant must:

- provide for a defensible space;
- demonstrate that the intent and performance criteria for the APZ (for the type of development in Chapter 4) will be satisfied; and
- demonstrate that other measures, in combination, will meet the relevant radiant heat levels specified in the performance criteria for APZs and will achieve the aim and objectives of PBP (see section 1.1).

Clearly, it is not acceptable to neglect bush fire measures at subdivision and LEP stage with the aim of solely relying on construction standards to provide protection from bush fires. APZs, designed to separate the hazard from the development, and adequate access provisions must be incorporated at all stages of the development.

For existing subdivisions, where bush fire protection measures were not incorporated at

the development application stage, it may not be possible to achieve an APZ of the required width, between the building site and the bush fire hazard. Development in these areas therefore poses some difficulties and higher levels of construction standards may be needed.

There may be situations where a combination of poor access, rugged topography, remote location and an inability to provide an adequate APZ would pose an unacceptable bush fire risk, even if the building was constructed in accordance with the strictest construction standards. In these cases, there is a strong argument for refusal of the development application. An essential requirement is the provision of a defensible space from any boundary that interfaces with the bushland.

#### (b) APZs on adjoining lands

Neither the RFS nor a council has the power to impose an APZ on an adjoining landowner. It is therefore the developer's responsibility to negotiate with adjoining land owner/s as part of the development application process. Details of the proposed easement and the adjoining owners consent should be submitted with the development application.

The DA must demonstrate that exceptional circumstances apply to the land to be developed prior to approval for the establishment of an easement. The requirement for an easement will then be included in the conditions of approval for the issuing of a BPSA/development consent.

The owner/occupier of the land who has benefited from the easement shall be responsible for maintaining the APZ.

Where an APZ easement has been established to the benefit of a community title, it shall be maintained in accordance with a plan of management (Part 5 of the Management Statement) for the community titled land.

Easements should not be considered where the adjoining land is used for a public purpose, where vegetation management is not likely or cannot be legally granted (eg National Park, council bushland reserve, SEPP 14 or SEPP 26, critical habitat). Existing easements for power and other services will be considered on their merits.

#### Examples of acceptable exceptional circumstances

The following are considered to be exceptional circumstances that may apply to a development application for an APZ to be located on adjoining land in bush fire prone areas.

## CHAPTER 3

- Where it can be demonstrated that there is a strong likelihood of the adjoining land being developed for future residential or other compatible purposes (eg staged development or Urban Development Program or Strategies with supporting development control plans),
    - Where a development was approved prior to 1 August 2002 and the applicant is only proposing alterations and/or additions to existing buildings and the existing APZ does not comply with current APZ requirements. The alterations/additions should lead to increased construction standards up to and beyond BCA (AS 3958) Level 3 construction.
  - Where easements are also required on adjoining land for the purposes of providing access for utilities, right of way, as fire trails, and drainage. These are to be kept clear of free standing vegetation. In such circumstances, the proponent will need to obtain written confirmation from the relevant authority that the easement will continue to be maintained in a suitable manner.
  - Where the proposal is considered 'infill' development for a single residential building and existing residential areas will also (or currently) benefit from improved APZs on the same adjoining land holding.
    - In all cases, the adjoining owner's consent is required to be lodged with the development application for an easement.
- (c) Location on Slopes over 18 Degrees**
- An APZ should not be located on land steeper than 18 degrees as:
- some management practices are impossible and all become difficult;
  - the environmental consequences of ground clearing (destabilization of the slope resulting in landslip, slump, erosion or landslide) may not be acceptable; and
  - the canopy fuels in forests and woodlands are more readily available to a fire, significantly reducing the advantage of having an APZ.
- Developments abutting such slopes should be located so that both the APZ and the development are not located on wooded slopes steeper than 18 degrees. Where slopes steeper than 18 degrees are predominantly grassland with sparse trees, a distance of 20 metres should be provided from the edge of the sloping land.
- Where it can be demonstrated that these issues can be effectively managed, APZs on steeper slopes will be considered as an exceptional circumstance.
- APZ tables in Appendix 2 are provided for acceptable solutions with slopes up to 18 degrees. Effective slopes in excess of 18 degrees will require a detailed performance assessment.
- (d) APZs in Split Zones**
- In some cases, a development may be proposed on land with a split zoning (e.g. Rural Residential/Environmental Protection). Bush fire protection measures may not necessarily be compatible with one of the zones. It should not be assumed that an APZ can extend into an adjoining non compatible zone and the suitability of this should be checked with the local council.
- Where environmental values such as endangered ecological communities are to be cleared, the proposal will need to be carefully considered in the light of the impact of the requirements for asset protection zones on these values.
- As with easements, a suitable covenant may be proposed as an exceptional circumstance which protects environmental values and provides suitable bush fire protection measures.



*Perklands and power easements provide exceptional circumstances for APZs*



# ANNEX O

## Moonee DCP Map 2

## PART 2 – PLANNING STRATEGY

## MASTERPLAN

### OBJECTIVE

- To provide an overall plan for the area.
- To encourage quality development whilst being sympathetic to the natural environment.

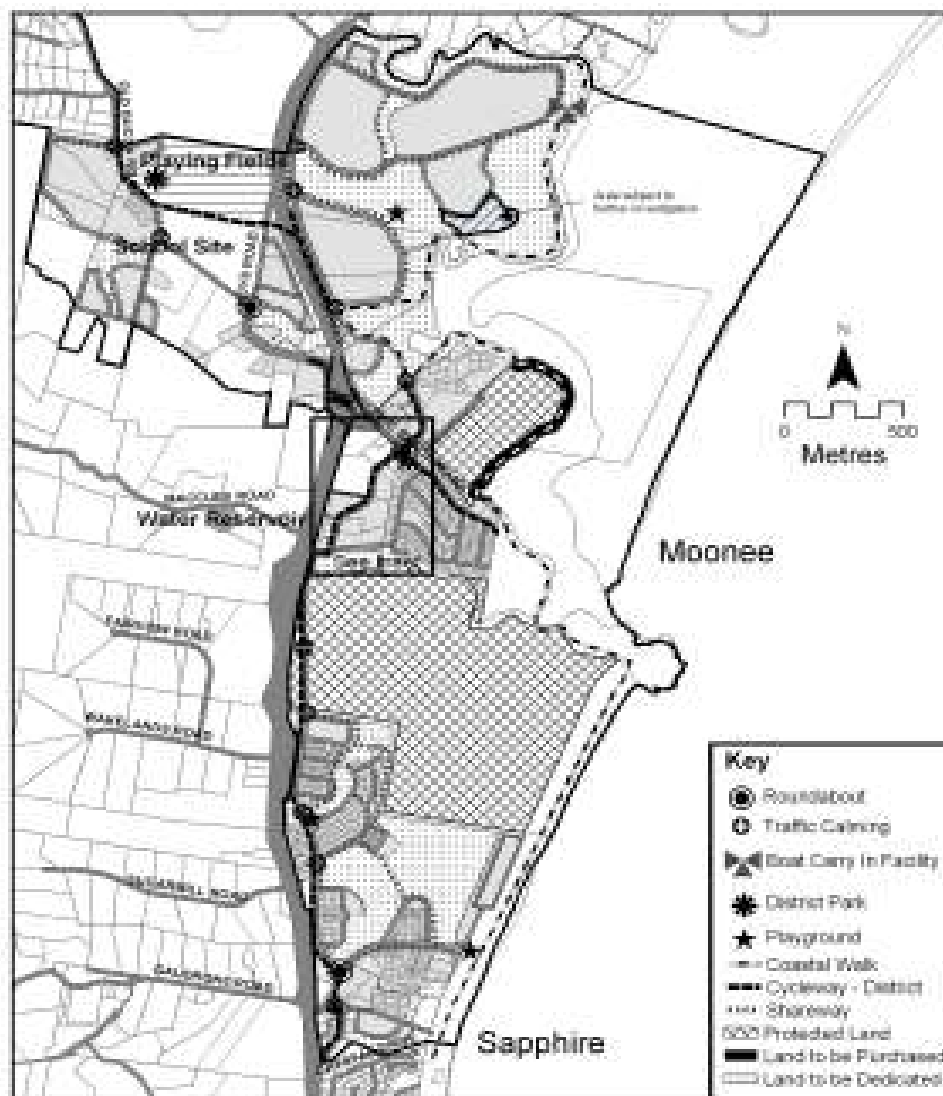
### SPECIFIC STRATEGIES

#### Economic Sustainability

- A minimum dwelling yield of 1,686; an additional 4,558 people.
- Water is to be supplied by extending the existing water main network.
- Sewerage reticulation and pump stations are to be constructed by developers, and connected to the Moonee Water Reclamation Plant.
- Retail and commercial development is to provide district business services.
- Developers are to forward fund any works required ahead of Council's servicing plans.

#### Social Sustainability

- A new multi purpose hall is to be provided in stages to reflect development progress.
- School facilities and fire station are to be provided in timely manner by State Government.
- Pedestrian paths and cycleways are to be constructed by the developer.
- A pedestrian and cycleway bridge is to be constructed over the Pacific Highway connecting residential areas to the school and sports facilities, through developer contributions.
- The collector road system will be provided through developer contributions paying for widening of local roads.
- The northern collector road will be funded through a local contribution applying to the properties it serves.
- Bus shelters to be provided so that all residential areas are no further than 400m from the nearest shelter.
- Playing fields are to be provided in Hoys Road adjacent to the proposed school.
- Children's playgrounds are to be provided so that all residential areas are no further than 500m from the nearest facility.
- A neighbourhood park to be provided adjacent to the shopping precinct.



### SPECIFIC STRATEGIES

#### Environmental Sustainability

- Identified buffer areas for water quality protection shown on the Masterplan are to be dedicated as development occurs.
- Perimeter roads shall be provided that separate urban development from protected areas.
- The provision for bushfire asset protection zones shall not involve the clearing of native vegetation within conservation areas.
- Development is to demonstrate achievement of water quality targets specified in Council's Urban Stormwater Management Plan.
- Acoustic design will ensure highway traffic noise does not exceed acceptable levels within dwellings.
- A landscaped buffer is to be provided between the highway and residential areas, designed to incorporate essential service corridors, and associated access.

