

# Southlands Remediation and Development Project

## Environmental Assessment

### Project Application (MP 06\_0191)

#### Appendix D: Section 94 Contribution Report



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***Orica/Goodman International***

***Southlands Development***  
***Review of Section 94 Contributions***

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## Appendix A

Review of Botany Bay Section 94 Contributions Plan

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## ***Executive Summary***

This report has been prepared to review Material Public Benefits (“MPB”) and potential section 94 developer contributions towards the provision of facilities and services associated with the development of the Southlands site. The subject development involves the development of the Southlands property on a staged basis with Project Approval being sought for Stages 1 and 2 of that development at this time. Stage 3 will be the subject of a later Project Application.

The Application will be determined by the Minister in accordance with the provisions of Part 3A of the *Environmental Planning and Assessment Act 1979* (“EP&A Act”). In accordance with Section 94B(2) of the EP&A Act, the Minister may impose a section 94 condition when granting consent, but is not bound by any Section 94 Development Contributions Plan (“CP”) that may be in place when making this decision. Notwithstanding, the Minister must take into consideration the CP when making a decision.

The Statement of Commitments that will be included in the Environmental Assessment submitted by the proponents will include the commitments in relation to the satisfaction of section 94 responsibilities as set out in this report. This includes the provision of significant MPBs that will be provided on a staged basis by the proponents as part of the development, and in particular will involve upgrades to the local street network. Stage 1 upgrades to the Hills and Exell intersections along with new roadworks to Botany Road will provide improved traffic conditions in the area providing direct road improvements for the local community and are therefore MPB's and may be provided as works in kind toward satisfaction of the section 94 contributions.

Stage 2 works will see significant contributions towards upgrade works to the local road network towards the development of a new Southlands Feeder Road at an estimated cost of some \$26 million plus some extent of local drainage upgrades that will benefit the local area.

These improvements will provide MPB's well in excess of the required S.94 contributions and are recommended as the subject of a Voluntary Planning Agreement (VPA) that can deal with their delivery and the potential for cost recovery from other local users.

This report also assesses in detail the applicable Botany Section 94 Contributions Plan so that these MPBs can be placed in context.

It is also noted that the NSW Roads and Traffic Authority have indicated that a road infrastructure levy of \$75,000 per hectare will be levied against the development. It is proposed that this should be included in the assessment of the credits for the proposal and that no such levy should be imposed.

This report provides a submission to the Department for consideration when reporting to the Minister, to determine Section 94 contributions which are considered to be reasonable and appropriate.

# 1. Introduction

## 1.1 Scope

This report has been prepared to assess contributions made under section 94 of the EP&A Act. The Southlands development will result in the development of land currently zoned industrial for industrial warehousing uses.

The main scope is to review the MPB's associated with the development and the developer contributions that may be sought for the provision of facilities and services in association with the development of the Southlands site. These facilities and services include community facilities, recreation facilities, transport management and administration costs under the Botany CP that Botany Council would normally consider.

The subject development is one which has been declared a State Significant Project under the terms of Section 75B(1)(a) of the EP&A Act and will, therefore be assessed by the Department of Planning ("DoP") and determined by the Minister in accordance with the provisions of Part 3A of the EP&A Act. This report is to accompany an Application to the DoP for Project Approval for the subdivision of the land, and the development of Stages 1 and 2 of the project in accordance with Division 4 of Part 3A of the EP&A Act.

In accordance with Section 94B(2) of the EP&A Act, the Minister (being the consent authority in this case) may impose a condition under Section 94 of the Act when granting consent, but is not bound by a CP. Notwithstanding, the Minister must take into consideration the CP when making a decision. Consequently, this report reviews the CP to provide a basis for the Minister when making decisions on contributions to be imposed or otherwise.

The report has been structured into three main sections as follows:

- A review of the project and the Material Public Benefits;
- A review of the legislative background;
- A summary of the current Botany Bay City Council S.94 Plan and its application to the site;
- A review of the current Botany Bay City Council S.94 Plan and its reasonableness; and
- An assessment of reasonable S. 94 Contributions that are attributable to the project.

## 1.2 Statement of Commitments

The Director-General will require a "Statement of Commitments" from the proponents outlining environmental management and mitigation measures to be undertaken as part of the development to accompany the applications for project approval. The purpose of this report is to review the various issues associated with the provision of facilities and services which are appropriately required to be provided in association with the development, inclusive of contributions towards such facilities and services as reflected within Council's Section 94 CP, and provide recommendations for inclusion within the Statement of Commitments.

## 1.3 Subject Site

The site is located in the Botany local government area (LGA) and fronts McPherson Street, near the intersection of Botany Road and Foreshore Drive at Banksmeadow.

The Southlands Site has a total site area of 18.288 hectares (excluding the Crown lands comprising the Springvale Drain). Stage 1 has an area of some 9.812 hectares, and Stage 2 has an area of 4.079 hectares.

## 1.4 Concept Plan

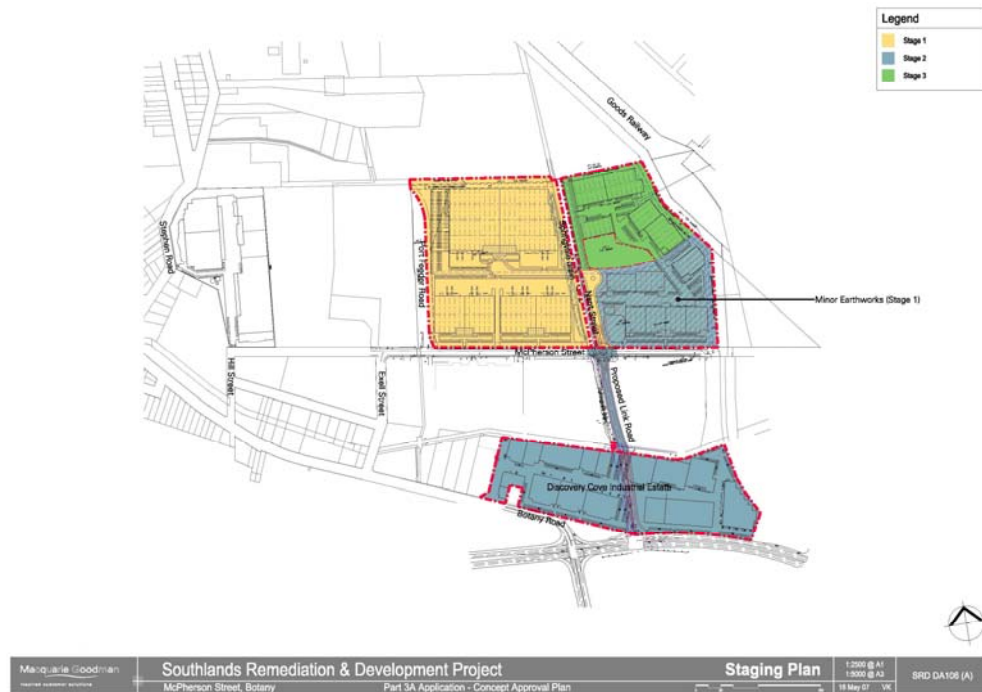
A concept plan for the development of the site has been prepared and involves:

- A 3 stage development of the Southlands property for a high quality warehousing estate with ancillary offices ( Stages 1 and 2 are currently proposed for Approval);
- Remediation of the site in accordance with a Remediation Action Plan;
- Extension of municipal services to the site;
- Improvements to local roads and intersections in the first stage to improve local area traffic conditions; and
- Stage 2 creation of a new “Southlands Feeder Road” from McPherson Street through to Botany Road;



Southlands Concept Plan





Proposed Staging Plan

## 1.5 Material Public Benefits

The proposal relevantly provides the following Material Public Benefits:

- The staged development of the Southlands property reinstating it as usable employment land;
- Upgrade works to local roads and intersections in Stage 1, including:
  - Upgrade works to the Hills and Exell Street intersections with Botany Road as part of this Project Application;
  - Improvements to Botany Road to increase its capacity and remove various "bottle neck" points involving closure of the Discovery Cove roundabout, improved turning movements at the Botany Foreshore Road intersection and the introduction of a new all turn entry into Discovery Cove. These works have been determined following community consultation and will deliver improvements to the local traffic conditions. However these additional works are not required for traffic reasons during Stage 1 and are to be provided as MBP's toward S.94 contributions should that be agreed with the Consent Authority;
- Substantial contributions towards a proposed Stage 2 road connection from McPherson Street to Botany Road (known as the "Southlands Feeder Road") to be provided prior to any development works on Stage 2 of the development. This option will be reviewed prior to any works proceeding on Stage 2. The construction of the road and drainage works for Stage 2 envisage (a) the adoption by Council of the road solution and road works contained in the Traffic Report; (b) the involvement of Council in the development of the road and drainage works; and (c) the agreement of all stakeholders, who will directly benefit from the road and drainage works, to contribute appropriately to the cost of the works. It is envisaged that a VPA or similar will be entered into with Council and other stakeholders for the staged development of this road. As the largest landowner in the road catchment area, the proponents will make the largest single contribution to the total cost under the VPA or other financial arrangement. The total cost is projected at \$26,000,000.



- Details of the proposed works, and in particular the proposed road improvements are contained with the Traffic Report, prepared by Traffix, for the project; and
- Proposed Stage 2 upgrade works to local stormwater infrastructure. This work is yet to be fully detailed (in terms of pipe sizing and costing, but a workable drainage solution has been developed) but will involve, upgrades to existing stormwater channels/ culverts along the new entry road to improve capacity from the area back to Botany Bay;

A summary of the value of each of these items is noted following.

**Table 1.1: Proposed Southlands MPBs**

No.	Material Public Benefit Item	Stage of Works	Value of Works (based on land valuation and QS costing Advice)
1.	Works to improve Hill and Exell Street Intersections	Stage 1	Approximately \$1.9m plus any land acquisition
2.	Upgrade works to Botany Road to improve traffic flows.	Stage 1	Approximately \$1.5 m plus any land acquisition costs
3.	Southlands Feeder Road linking Botany Road through to McPherson Street, through Discovery Cove and MCS land.	Stage 2	Approximately \$26m (of which, the proponents will make the largest single proportionate contribution under a VPA or other financial arrangement)
4	Upgrades to culverts/ pipework to local area stormwater system.	Stage 2	Full detailed costing yet to be done (but the proponents will make the largest single proportionate contribution to the cost).
	Total		Minimum \$29.4 million

MPB's are therefore delivered by the project on a staged basis with Stage 1 committing to the expenditure of approximately \$3.4 million plus land acquisition costs. Stage 2 then sees an additional \$26 million plus drainage infrastructure improvement costs delivered as a co-development as a consequence of the total development.

Total works costs therefore equal some \$29.4 million (plus land acquisition costs) plus the costs of drainage infrastructure improvement costs delivered with the new link road in Stages 2.

## 1.6 Documents Reviewed

For the purposes of preparing this report we have sourced the following documents:

- Botany Council Section 94 Contributions Plan 2005-2010.
- City of Botany Local Environmental Plan 1995.
- The Environmental Planning and Assessment Act 1979 (as amended).
- The Environmental Planning and Assessment Regulation 2000 (as amended).
- Department of Infrastructure Planning and Natural Resources, *NSW Development Contributions System Practice Notes*, 2005.
- The Section 94 Contributions Manual prepared by the then Department of Urban Affairs & Planning (June 1997) ("The S94 Manual").

## 2. Legislative Background

### 2.1 Section 94 Contributions

Section 94 of the EP&A Act is the sole source of power enabling a Council to require the dedication of land or payment of a monetary contribution (or both) as a condition of development consent. The functions and duties associated with this power are set out in the EP&A Act and the *Environmental Planning and Assessment Regulation, 2000* (“the EP&A Regulation”).

The basis of section 94 is that a contribution can only be imposed if there is **demonstrated demand** for the public services and facilities, and only if the contribution is **reasonable**. Section 94 expressly refers to reasonableness by:

- Requiring reasonable dedication or contribution (s. 94(2)).
- Requiring reasonable contribution towards recoupment (s. 94(4)).
- Enabling a condition to be disallowed by the Court because it is unreasonable (s. 94B(3)).

Reasonableness is the key criteria to test whether the functions and duties associated with imposition of a contribution are sustainable. These criteria include whether a proponent is to or has provided a MPB.

### 2.2 Material Public Benefit

A section 94 contribution may be satisfied in accordance with Section 94(5) by:

1. The dedication of land;
2. A monetary contribution;
3. The provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution); or
4. A combination of some or all of the above.

It is relevant to note that under Section 94(5), the consent authority has discretion to accept a MPB. However, section 94(6) provides that if the consent authority proposes to impose a Section 94 contribution, the “*consent authority must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority*”. In other words, a consent authority is bound to consider the provision of any MPB in determining any application.

As set out in the NSW *Development Contributions Practice Notes* (“Exemptions, discounts, credits and refunds”) a MPB:

“could be:

- a work in kind which is undertaking a work that is specifically listed in the works schedule of a development contributions plan for which a monetary contribution would normally be sought.
- the provision of certain public amenities or services that may or may not exist in the area such as a community facility that are not included in a development contributions plan. ....

*The provision of public facilities by an applicant undertaking a work in kind can facilitate early provision of public facilities concurrent with the demand generated by a new development. This approach may be desirable to both the developer and the council.”*

The provision of a MPB through a work in kind (“**WIK**”) is commonly undertaken by applicants and this gives rise to an “offset” against other section 94 liabilities.

## 2.3 Guidelines for the Preparation of Section 94 Plans

The former Department of Urban Affairs and Planning (“DUAP”) prepared a *Section 94 Contributions Plan Manual* which provided guidelines for the introduction of development contributions (*Section 94 Contributions Manual Second Edition*, DUAP, 1997). This Section 94 manual superseded a Draft Manual prepared by the (then) Department of Planning in 1991. There are also numerous Land and Environment Court cases which have set out the requirements to be met in levying contributions.

A suite of practice notes (*NSW Contributions Practice Notes*, July 2005) were made by the former Department of Infrastructure Planning and Natural Resources (“DIPNR” - now the Department of Planning) for the purposes of clause 25B(2) of the EP&A Regulation. These *Practice Notes* largely supersede the *Section 94 Manual* although it is also noted that the *Section 94 Manual* remains an important reference document.

The DIPNR *Practice Notes* and *Section 94 Manual* outline two key principles of section 94 relevant to this report:

- **Nexus and Area:** A condition can only be imposed where the consent authority is satisfied that the development will increase the demand for public amenities and public services within the area (s. 94(1) EPA Act)
- **Reasonableness:** Only a reasonable dedication or contribution may be required (s. 94 (2))

Nexus is defined in the *NSW Contributions Practice Notes* as:

“Nexus is the relationship between the expected types of development in the area and the **demonstrated need** for additional public facilities created by those developments.” (DIPNR, 2005, Practice Note – Principles underlying development contributions: 1; author’s emphasis).

The *Section 94 Manual* noted that the “demonstration of nexus is one of the core components of a valid CP and is a specific requirement of clause 26(1)(c) of the Regulation.” (DUAP, 1992:8). The *Section 94 Manual* and *Practice Notes* both make the point that reasonableness comprises concepts of fairness, equity, sound judgement and moderation. These issues are considered in detail throughout this report where relevant.

### **3. Development Contributions**

#### **3.1 Botany Contributions Plan**

Botany Council prepared a section 94 CP in 1992 when the original requirements for plan preparation came into effect through amendments to the EP&A Act. This CP's, often known as a "1<sup>st</sup> Generation CP", have been superseded by the current Botany CP which was made in December 2005 and came into force in January 2006.

The CP sets out the estimated resident and employment growth that Council has forecast for the Botany local government area ("**LGA**") in the period 2005-2010, and the range of public services and facilities that are required to cater to that growth.

The facilities and services that the CP levies for include:

- Community facilities and services.
- Recreation and open space facilities and services.
- Transport management facilities.
- Drainage facilities.
- Administration of the CP.

One of the key aspects of the Plan in relation to the Banksmeadow South Industrial Area is the raising of contributions toward the construction of new feeder Road between McPherson Street and Botany Road. Council have investigated the need for this link and have determined a possible route along the port railway line and linking to the high level intersection of Beauchamp and Botany Road. The Botany CP establishes a cost for this road link at some \$15 million.

The Southlands Development Application envisages the provisions of this link (albeit in another location, but the proposed link road will fulfil the same function) as part of Stage 2 works as a co-development with all benefiting stakeholders in the road/drainage catchment area.

#### **3.2 Forecast Development**

The CP identifies population and employment growth in the period 2005 to 2026 in the area. Both of these growth figures are then used to identify the facilities required to cater to demands.

Residential growth for the period is estimated at 7,986 residents while employment growth is estimated at 5,136 (although this figure includes employment growth in the airport and Port Botany which are outside the jurisdiction of the Council).

The actual employment growth for the CP planning period (2005-2010), as set out in Table 2.6 of the CP, is 3,039 residents and 2,415 employees (including those within the Mascot Station Precinct).

#### **3.3 Demand for Facilities**

The CP identifies demand for various facilities as follows.

##### **3.3.1 Community Facilities**

The CP identifies the following demand from employment growth:

- Library facilities.
- Child care facilities.

In relation to library facilities, the Council has assumed that the future employment growth used in the CP will have a similar use profile to local residents (the CP estimates that only 10% of employment growth will use libraries). The CP then apportions this 'demand' between residents and workers.

### 3.3.2 Recreation Facilities

The CP identifies demand from employment growth for recreation facilities. The CP includes the following:

- Acquisition of open space.
- Embellishment of open space.
- Development of other facilities (pathways/cycleways, more recreation facilities, sports field works and upgrades.
- Upgrade of Botany Pool.
- Costs of recreation studies.
- Employment of a recreation officer.

The CP levies employment growth around 19% of the total cost of these recreation facilities based on a 1992 Council study that indicated that workers "use open space at about 19% of the rate used by residents" (p 66, Botany CP).

### 3.3.3 Transport Facilities

The CP identifies a range of transport management facilities. In relation to the subject site, which is located within the Banksmeadow South catchment, the following facilities are proposed to cater to demand:

- Traffic management works.
- Pedestrian mobility works.
- Shopping centre improvements.
- Botany Road and Stephen Road works.
- Exell Street works.
- Port Botany Feeder Road extension (McPherson Street to Botany Road – noting that Botany Road is referred in the Botany CP as "Foreshore Road").
- Street lighting.

The total works in the Banksmeadow South catchment are \$21,600,000 which represents around 57% of the total transport works program for the LGA. The figures are shown in Table 3.1 below

**Table 3.1: Transport Works Program: Banksmeadow South**

Works Program Items	CP Cost
Rectification of road degradation by increased heavy vehicle use	\$ 800,000.00
Traffic Management	\$200,000.00
Pedestrian	\$50,000.00
Botany Road and Stephen Road	\$500,000.00
Exell Street	\$5,000,000.00
Port Botany feeder extension McPherson Street to Foreshore Road	\$15,000,000.00
Street Lighting	\$ 50,000.00
Total	\$21,600,000.00

Source: Botany CP, 2005 to 2101

The Port Botany feeder extension from McPherson Street to Botany (Foreshore) Road is clearly a major item in this catchment and it is noted that the works program for transport facilities (Table 4 to the CP), indicates that the Council will be funding a major proportion of this facility (some \$10.8 million

in the period 2005 to 2010). Shopping centre improvements total \$1,685,000 of which \$539,200 (or 32%) is to be funded by future workers.

### 3.3.4 Administration

The costs of administration of the section 94 plan are included in the CP at \$250,000 for the 5 year life of the plan which includes a recreation study and the employment of a recreation officer during the life of the CP. The costs apportioned to the future worker population is \$121,495.

Although it is considered appropriate that the costs of administration are included in the plan, the resulting contributions must be reasonable. This is discussed in later sections of this report.

## 3.4 Section 94 Contributions

The Botany CP includes a requirement for a contribution to be made for various forms of development including employment development. This includes contributions for community facilities, open space/recreation, shopping centre works, traffic management facilities and administration.

Although the Council has not yet indicated the quantum of such contributions that may be considered after the above MPB/WIK are taken into account, the strict application of the existing rates for various contributions for the proposed total site development as proposed in the entire Southlands site (Stages 1 – 3) are set out in Table 3.2. This table also indicates how much of the entire works program that the subject development would fund (worker component only).

**Table 3.2: Section 94 Contributions for the Total Southlands Project  
(Entire Site, Stages 1 - 3) – Botany CP<sup>1</sup>.**

Current Required S. 94 Contribution	Rate	Required Contribution	Southlands Proportional Contribution of Entire CP Works Program <sup>2</sup>
Community facility	\$259.00 per empl.	\$308,424.00	32%
Administration	\$42.00 per empl	\$50,014.00	32%
Shopping Centre Improvements (City Wide)	\$188.00 per empl.	\$223,875	33%
Open Space and Recreation	\$1,745.00 per empl.	\$1,594,930.00	43%
<b>Total per Employee</b>	<b>\$2,234.00</b>	<b>\$2,660,307.00</b>	
Transport Management (based on site area 18.288 ha)	\$20.19 Per m <sup>2</sup> site area	\$3,692,347.00	10%
<b>Total Payment Required</b>		<b>\$6,352,654.00</b>	

Note:

1. Rates are based on the January 2006 CP. The Council has advised the rates have not changed since the time the CP has been adopted.
2. The % proportion of the works program is the share of future worker responsibility under the Botany CP.
3. Based on Total Site area excluding Nant Street Corridor and DOL lands of 182,880 m<sup>2</sup>, and gross floor area of 79, 190 m<sup>2</sup> as shown on final Concept Plan;
4. Employee numbers determined in accordance with Botany CP as Transport/Storage/ Warehousing at 1 employee per 66.5 m<sup>2</sup> = 1191 employees.

Table 3.3 then examines the Contributions that are required by the Botany CP for Stage 1 and 2 of the development. These are the total contributions that would be applied under the Botany CP for the first stages of the development on the site (refer **Appendix A** for further discussion on the rates in Table 3.3).

**Table 3.3: Section 94 Contributions for Stage 1 – Southlands Project  
(Project Approval)– Botany CP<sup>1</sup>.**

Current Required S. 94 Contribution	Rate	Required Contribution	Southlands Proportional Contribution of Entire CP Works Program <sup>2</sup>
Community facility	\$259.00 per empl.	\$183,052.00	32%
Administration	\$42.00 per empl	\$29,684.00	32%
Shopping Centre Improvements (City Wide)	\$188.00 per empl.	\$132,872	33%
Open Space and Recreation	\$1,745.00 per empl.	\$1,233,308.00	43%
<b>Total per Employee</b>	<b>\$2,234.00</b>	<b>\$1,578,916</b>	10%
Transport Management (based on Stage 1 site area 9.812 ha)	\$20.19 Per m <sup>2</sup> site area	\$1,981,042	
<b>Total Payment Required</b>		<b>\$3,559,560</b>	

Note:

1. Rates are based on the January 2006 CP. The Council has advised the rates have not changed since the time the CP has been adopted.
2. The % proportion of the works program is the share of future worker responsibility under the Botany CP.
3. Based on Total Site area excluding Nant Street Corridor and DOL lands of 98,120 m<sup>2</sup>, and gross floor area of 47,000 m<sup>2</sup> as shown on final Project Plan;
4. Employee numbers determined in accordance with Botany CP as Transport/Storage/ Warehousing at 1 employee per 66.5 m<sup>2</sup> = 707 employees.

**Table 3.3: Section 94 Contributions for Stage 2 - Southlands Project  
(Project Approval) – Botany CP<sup>1</sup>.**

Current Required S. 94 Contribution	Rate	Required Contribution	Southlands Proportional Contribution of Entire CP Works Program <sup>2</sup>
Community facility	\$259.00 per empl.	\$64,232.00	32%
Administration	\$42.00 per empl	\$10,416.00	32%
Shopping Centre Improvements (City Wide)	\$188.00 per empl.	\$46,624.00	33%
Open Space and Recreation	\$1,745.00 per empl.	\$432,760.00	43%
<b>Total per Employee</b>	<b>\$2,234.00</b>	<b>\$554,032.00</b>	10%
Transport Management (based on Stage 1 site area 4.079 ha)	\$20.19 Per m <sup>2</sup> site area	\$823,550.00	
<b>Total Payment Required</b>		<b>\$1,377,582</b>	

Note:

1. Rates are based on the January 2006 CP. The Council has advised the rates have not changed since the time the CP has been adopted.
2. The % proportion of the works program is the share of future worker responsibility under the Botany CP.
3. Based on Total Site area excluding Nant Street Corridor and DOL lands of 40,790 m<sup>2</sup>, and gross floor area of 16,490 m<sup>2</sup> as shown on final Project Plan;
4. Employee numbers determined in accordance with Botany CP as Transport/Storage/ Warehousing at 1 employee per 66.5 m<sup>2</sup> = 248 employees.

The applicable S. 94 charges for the project are therefore as follows:

- Stage 1 - \$3,559,560;
- Stage 2 - \$1,377,582;
- Stages 3 – Subject to later Application but anticipated to be \$1,415,512, based on the current Botany CP;
- Total Overall Concept = \$6,352,654.00



These amounts would normally be payable prior to the issuance of a Construction Certificate for each Stage of the project.

Discussion of the reasonableness of this payment and the offset created by the Material Public Benefits offered by the project versus the need for this payment are considered in the following sections of this report and a detailed analysis of the existing Section 94 CP are contained in **Appendix A**.

It is noted, however, that the means to calculate employee numbers and consequential contributions per worker appear high. Similarly, contributions for community facilities and open space/recreation appear disproportionately high especially for a development where over 80% of the floorspace is devoted to warehousing and storage. It is also noted that the proportional share of the total works program of the subject development is quite high for these components.

The issues regarding the reasonableness of these contributions are summarised in the following section of this report and detailed in **Appendix A**.

### 3.5 RTA Contributions

It is understood that the NSW Roads and Traffic Authority ("RTA") has indicated that it will seek a contribution of \$75,000 per hectare for the upgrade of local road infrastructure. Stage 1 works do not involve direct connection to Botany Road but simply involves improvements and therefore no nexus is seen between the Southlands works and the main road system.

The Stage 2 works will involve the proposed Southlands Feeder Road, or something similar, currently costed at some \$26 million of which notionally only \$15 million is covered by the Botany CP.

The RTA levy would equate to a maximum of \$1.35 million for the entire site, it is proposed that no RTA levy should be imposed on the development because of the significant contributions required by the proponents toward the road.

## 4. Discussion of Issues

### 4.1 Introduction

An analysis of the reasonableness of the Botany CP as it relates to the Southlands development has been undertaken to assist the DoP in making a recommendation to the Minister. The assessment covers the key matters associated with the CP as follows:

- Issues relating to **MPBs provided by the development and the equity of applying these improvements to the Southlands development only or as a benefit to the local area.**
- Issues relating to the **reasonableness of individual contribution types** (viz community, open space/recreation, transport facilities). The reasonableness of contributions such as community facilities and open space are questioned as it appears that employment development may be required to make disproportionately high or unreasonable contributions.
- Issues relating to the way the **contribution calculations** are made. This relates to way the employment workforce is calculated for the subject development as it would appear that the calculation over-estimates the workforce.
- Proposals for a VPA or Public Private Partnership with the Council and benefiting stakeholders that addresses the above issues.

These are described in detail below.

### 4.2 Equity of Applying Road Works outside the Proposal as MPB's

It is relevant that the proposal will provide for a range of MPB's as set out earlier in this report. Specifically, Stage 1 works will deliver improvements to the intersections at Hills and Exell Streets, along with a range improvements to Botany Road and the intersection with Foreshore Road. These works are designed to improve local road capacity and improve current congestion issues in the area. Subject to suitable arrangements being made with regard to cost and delivery, Stage 2 works will deliver a major new piece of infrastructure in the form of the link road and the upgraded drainage works to deal with local flooding issues.

#### Stage 1 Works

Traffic advice from Traffix Pty Ltd confirms that the upgrades to Hills and Exell Streets will provide sufficient capacity to meet the needs of the existing traffic flows on McPherson Street and the Stage 1 Southlands traffic. Works along Botany Road have come about after community consultation and will deliver improvements to the local traffic conditions.

Southlands is the last remaining parcel of industrial land fronting McPherson Street. As the last remaining piece of undeveloped land on McPherson Street it has therefore not enjoyed the free and open access to the street system enjoyed by existing properties fronting McPherson Street. That is, existing developments on McPherson Street have served to generate the range of traffic currently experienced in the area and are enjoying the access to that road system, which arguably should be shared amongst the properties that front the road system. The Southlands property, being undeveloped has never contributed to this level of traffic and therefore has not enjoyed any of its capacity to date. The existing developments in the area have therefore effectively absorbed the available capacity of the local street system.

It is a matter of equity that Southlands be offered the same level of access and use of the existing road system currently enjoyed by neighbouring properties, particularly as Southlands has paid all required

rates and taxes in much the same way as adjoining properties, without enjoying the access accepted by those sites.

The measures proposed by the proponents as part of the Stage 1 works to improve local traffic conditions (and particularly the upgrade to Hill and Exell Street intersections) will serve to improve local traffic intersections / conditions. The additional works proposed along Botany Road to improve traffic flows are therefore a direct benefit to all parties who have access to the road.

These road works are therefore contributing to the increase in capacity of the road system for all parties making use of that road system. The upgrade works therefore benefit all road users and not purely the Southlands site. They are in effect, a Material Public Benefit improving the road system for all properties facing McPherson Street and the surrounding area. They are measures that will be available of the use of all parties and on an equity basis should not be a cost totally borne by the Southlands property. They are then a Material Public Benefit and should be seen as Works in Kind toward normal S. 94 Contributions.

The cost of delivering these works is estimated at a total cost of \$3.4M plus land acquisition costs. This cost effectively matches the current applicable S.94 contributions of \$ 3,559,560 applicable to Stage 1. This obvious offset, does not take into account the significant MPB's delivered as a result of the remaining stages of the project as discussed following.

### **Stage 2 Works**

It is proposed that the new Southlands Feeder Road link from McPherson Street to Botany Road will be provided prior to any development works in Stage 2, subject to the Council both adopting this road plan in substitution for its existing S94 proposal for the area and agreeing with the proponents and the benefiting stakeholders in the road catchment area to co-develop the road and drainage works. The proponents propose that all stakeholders in the road catchment area, who will directly benefit from the road, should contribute to its construction costs proportionately, either by direct cash payments or, indirectly, through S94 contributions. Further, the proponents anticipate that Council will apply the relevant S94 contributions to the cost of the road and drainage works, since equity demands that all those who benefit should share the costs proportionately.

As the largest landowner in the road catchment area, the proponents will make the largest single proportionate contribution to the cost. This contribution will exceed, by many times, the S94 contribution, which the proponents would otherwise be required to make under the Council's current road plan for the road catchment area. It is envisaged that these arrangements would be covered in a suitable VPA or a Public/Private Partnership.

This road is a significant road addition to the local road network (value approximately \$26 million) and is separately planned by the Council as part of the Section 94 works in the Botany CP (albeit in another location, but the proposed link road will fulfil the same function). It is understood that, at this stage, the Council had identified the new link in a location slightly to the east near the railway line, but that Council and the RTA have generally acknowledged the proposed Southlands Feeder Road is an appropriate alternative option to meet the local transport needs.

This road is not required for Stage 1 of the proposal and would be installed prior to Stage 2. It would therefore be considered to be a MPB for the purposes of the EP&A Act for that Stage of the Project and in itself represents a significant expenditure on Works in Kind that will more than meet the identified S. 94 charges for all stages of the development.

Improvements to the local stormwater system carried out in Stage 2, whilst unnecessary for the Stage 1 development, will also lead to an improved flooding situation in the local area. We understand that the Stage 1 development does not require any major upgrades to the local stormwater system and

that the current Stage 1 plan allows for all current flooding conditions to be maintained through the maintenance of approximately 50% of the site as an interim compensatory flood storage area.

However, local drainage conditions will need to be upgraded prior to Stages 2 and 3. Works are proposed to upgrade the stormwater infrastructure along the alignment for the new road to increase capacity through to Botany Bay as part of Stage 2. These measures will deliver improved flood impacts for the local area and are therefore also considered to be a MPB that should be taken into account in the consideration for Stage 2. Certainly, in a similar manner to the traffic solution, stormwater and flooding solutions for the area should be seen as a collective issue for all landowners and the costs for improvements should not be solely borne by the last development site in the area.

In accordance with section 94(6) of the EP&A Act, local road / intersection works and the feeder road *must* be taken into account in the imposition of any contribution if it has already been provided. Given that the value of the MPB/WIK would far exceed any section 94 contributions that may be imposed, and that a substantial “credit” would be created in the future (which cannot be taken into account now), it is considered that a VPA is the appropriate vehicle within which the road should be considered as it allows the credit to be triggered upon the provision of the road.

#### **Reasonableness of Individual Contribution Types**

An assessment of the reasonableness of the current S. 94 Plan provisions has been conducted. This notes a number of apparent inconsistencies in the plan and its application to the subject site. These issues particularly relate to:

- Population and Employment Growth;
- Community Facilities;
- Recreation and Open Space Facilities;
- Transport Facilities;
- Administration;
- Basis of Contribution Calculation.

The reasonableness of these contributions is set out more fully in **Appendix A**, however, in summary:

- The contributions for employment lands are not considered to be reasonable firstly because the derivation of employment numbers is considered to be flawed and, secondly, because the inferred nexus for facilities required as a result of employment growth is extremely tenuous.
- A revised contribution that would reasonable relate to the development is set out in Appendix A.

### **4.3 Required Contributions**

In accordance with section 94(6) of the EP&A Act, and the nominated MPB's offered by the project on a staged basis, it is recommended that the proponents enter into a VPA to cover the Staged delivery of the various MPB's in lieu of the required S.94 contributions required for each stage of the development. Specifically the VPA would address the following:

- **Stage 1:** To secure the delivery of the Stage 1 MPB's as works in kind and make no further contribution to the Council or the RTA for Stage 1 in recognition of those MPB's, and in particular the various upgrades to the Hills and Exell Street intersections, plus the improvements to Botany Road.
- **Stage 2:** To recognise the Stage 2 works in kind in the form of the new Southlands Feeder Road, plus local area stormwater infrastructure improvements and make no contribution to the Council or the RTA.

Indeed the project would be significantly in credit and no further contribution would then be required for the future Stage 3 Application. That is, once the new Southlands Feeder Road and associated drainage works are constructed, the Southlands development would be substantially in credit. The proponents intend that all benefiting stakeholders in the road catchment area contribute proportionately to the cost of the road and associated drainage works, in proportion to their respective land areas, with the largest single contribution being made by the proponents. These cost sharing and co-development arrangements will need to be agreed in advance of the development of Stage 2 in a VPA to secure the new road and drainage upgrades.

## 5. Conclusion

The necessity for additional facilities and services is often a consequence of development and such facilities and services are normally provided by Council through the application of Section 94 Contributions Plans where they are required to serve more than one development.

The Minister will be the determining authority of the proposed Southlands development. In this situation, the legislation provides scope for the Minister to determine applicable section 94 contributions, together with other conditions of consent, without a requirement to be strictly bound by Botany Council's Section 94 Plan.

The Material Public Benefits proposed by the Southlands development are considered significant and should be taken into account when the consent is determined.

The MPB's include:

- Upgrade works to local roads and intersections in Stage 1, including:
  - Upgrade works to the Hills and Exell Street intersections with Botany Road;
  - Improvements to Botany Road to increase its capacity and remove various "bottle neck points" involving closure of the Discovery Cove roundabout, improved turning movements at the Botany Foreshore Road intersection and the introduction of a new all turn entry into Discovery Cove. These works have been determined following community consultation and will deliver improvements to the local traffic conditions;
- A Stage 2 road connection from McPherson Street to Botany Road (known as the "Southlands Feeder Road") to be provided prior to any development works on Stages 2 of the development. This option will be reviewed prior to any works proceeding on Stages 2 and will be subject to appropriate arrangements being reached with the benefiting stakeholders and Council with regard to development and cost sharing; and
- Proposed Stage 2 upgrade works to local stormwater infrastructure. This work is yet to be fully detailed (in terms of pipe sizing and costing, but a workable drainage solution has been developed) but will involve, upgrades to existing stormwater channels/ culverts along the new entry road to improve capacity from the area back to Botany Bay. This work will, likewise, be subject to appropriate arrangements being reached with the benefiting stakeholders and Council with regard to development and cost sharing.

The MPB's are far in excess of the section 94 contributions that would reasonably be applied to the development, and meet the required contributions for the total concept and on a staged basis. This review therefore makes the following recommendations based on the MPB's proposed in the various Stages of works at Southlands:

The proponents, Council and benefiting stakeholders enter into a VPA to cover the staged delivery of the various MPB's in lieu of the required S.94 contributions required for each stage of the development. Specifically the VPA would address the following:

- **Stage 1:** To secure the delivery of the Stage 1 MPB's as works in kind and make no further contribution to the Council or the RTA for Stage 1 in recognition of those MPB's, and in particular the various upgrades to the Hills and Exell Street intersections, plus the improvements to Botany Road.
- **Stage 2:** To recognise the Stage 2 works in kind in the form of the new Southlands Feeder Road, plus local area stormwater infrastructure improvements and make no contribution to the Council or the RTA.

Indeed the project would be significantly in credit and no further contribution would then be required for the future Stage 3 Application. That is, once the new Southlands Feeder Road, is constructed the Southlands development would be many millions of dollars in credit. The proposed arrangements would need to be structured in a VPA to secure the new road and drainage upgrades with contributions by benefiting stakeholders and the Council (from collected S94. contributions) applied to the total road/drainage cost.

In terms of the section 94 contributions that would ordinarily be calculated under the Botany CP, this submission has noted some issues with the reasonableness of such contributions. Application of the Botany CP strictly in accordance with the rates that are contained within that CP would lead to an unreasonable contribution, particularly given the size of the likely MPB's. For this reason, it is considered that use of a VPA is an appropriate vehicle for the consideration of developer contributions.

The proponents seek to work with Council and other benefiting stakeholders to develop and enter into a VPA to cover the staged delivery of the various MPB's in lieu of the required S.94 contributions required for each stage of the development.



# Appendix A

## Review of Botany Bay Section 94 Contributions Plan

## APPENDIX A

### REVIEW OF BOTANY BAY SECTION 94 CONTRIBUTIONS PLAN

#### A.1. Botany Contributions Plan

Botany Council prepared a section 94 CP in 1992 when the original requirements for plan preparation came into effect through amendments to the EP&A Act. This CP's, often known as a "1<sup>st</sup> Generation CP's", have been superseded by the current Botany CP which was made in December 2005 and came into force in January 2006.

The CP sets out the estimated resident and employment growth that Council has forecast for the Botany local government area ("LGA") in the period 2005-2010, and the range of public services and facilities that are required to cater to that growth.

The facilities and services that the CP levies for include:

- Community facilities and services.
- Recreation and open space facilities and services.
- Transport management facilities.
- Drainage facilities.
- Administration of the CP.

The rationale for the Council levying for these facilities are considered in the subsequent sections.

#### A.2. Section 94 Contributions

The Botany CP includes a requirement for a contribution to be made for various forms of development including employment development. This includes contributions for community facilities, open space/recreation, shopping centre works, traffic management facilities and administration.

Although the Council has not yet indicated the quantum of such contributions that may be considered after the above MPB/WIK are taken into account, the strict application of the existing rates for various contributions for the proposed development are set out in Table A.1. This table also indicates how much of the entire works program that the subject development would fund (worker component only).

**Table A.1: Section 94 Contributions for Southlands – Botany CP**

Current Required S. 94 Contribution	Rate	Required Contribution	Southlands Proportional Contribution of Entire CP Works Program <sup>1</sup>
Community facility	\$259.00	\$274,073.44	37%
Administration	\$42.00	\$44,444.34	37%
Shopping Centre Improvements (City Wide)	\$188.00	\$198,941.34	37%
Open Space and Recreation	\$1,745.00	\$1,846,556.58	50%
Transport Management	Per m <sup>2</sup> Site Area	\$3,750,292.50	11%
<b>Total Payment Required</b>		<b>\$6,739,821.22</b>	

Note:

1. The % proportion of the works program is the share of future worker responsibility under the Botany CP.

The immediate impression from this table is that the contributions for community facilities and open space/recreation appear unusually high especially for a development where over 80% of the floorspace is devoted to warehousing storage. It is also noted that the proportional share of the total works program

of the subject development is quite high for these components.

A contribution can only be imposed under section 94 if it is reasonable. The issues regarding these contributions and their reasonableness are discussed below.

### A.3. Population and Employment Growth

The CP sets out in Sections 3.5 and 3.6 the population and employment growth that is forecast to occur from 2005 to 2010 as follows:

- Population growth – 3,309 persons.
- Employment growth – 2,874 workers.

The CP identifies workforce dynamics in the Botany area and correctly identifies trends in industrial development as:

- Declining manufacturing industries and increase in warehousing industries in response to the growing importance of the two “ports” in the area (Sydney Airport and Port Botany).
- Decline in employment within the industrial as a result of the above changes (although “mobile” jobs such as those in the transport industries grew).
- Redevelopment of industrial lands will occur although this is not likely to create significant employment growth.

The CP excludes residents and workers that are to be generated in the Mascot Station Precinct CP. Although the Mascot Station Precinct CP does not give population and employment figures, the following are deduced by deducting the total population growth in the period 2005-2010 from the figures adopted for the CP (refer page 66 of the CP for these figures).

That is, in the area subject to the CP, the following figures are used:

- **Botany CP:** 1,689 residents and 1,999 workers.
- **Mascot Station Precinct CP:** 1,350 residents and 875 workers.

The key issue with this methodology is that it is only growth in the Botany CP area that is then levied for recreation (at least the key major facilities) and traffic management facilities. This is a significant omission given the significant growth in the Mascot Station Precinct. While the Mascot Station CP does levy for a small amount of open space, the major sports facilities and other major open space improvements in the Botany CP should be apportioned across the entire population and not exclude the Mascot population. Similarly, traffic impacts are widely distributed and, while there are some traffic works in the Mascot Station Precinct, there are many other facilities outside the area which will cater to demand in the Mascot Station area. Notably, the contribution derived for community facilities does use the Mascot population which is an internal inconsistency with the CP.

The reduction in resident and worker populations is significant consideration as to the reasonableness of contributions since it increases the contributions payable for other development (since there is a smaller population, resulting contributions are higher). It is considered that the resident and population figures should be included in the CP assessment as this is a reasonable approach to the determination of a contribution. The revised contributions calculations take this additional growth into account.

### A.4. Community Facilities

The CP levies employment uses for various community facilities in accordance with an estimate of the demand that is generated by such uses. It is noted that the community facilities strategy **does** utilise the resident and worker populations generated by the Mascot Station Precinct.

In relation to library facilities, although the CP estimates that only 10% of future workers will use libraries, the Council has assumed that these workers will have a similar library use profile to local residents that do utilise library resources. The CP then apportions this 'demand' between residents and workers. This is an arguable proposition as workers and residential population in other CPs throughout Sydney are not treated in this way.

Even with this arguable use profile, the future workforce would pay for around 27% of the library facilities even though the future worker numbers (10% or 287 persons) only represents around 8.6% of the total growth (ie 3,039 + 287). This also assumes that the 10% figure does not include workers that are residents (noting that almost 10% of the current workforce resides in the LGA) and that workers have exactly the same demand profile as residents.

Similarly, future employees are responsible for almost 46% of the cost of child care facilities. This rests on the assumption that workers create equal child care demand to residents (which, it is noted, the CP fails to establish). Given the major component of the future workforce is likely to be predominantly male, blue collar workers resident outside the LGA and the type of child care facilities proposed (0-2 years) is unlikely to be a segment that such workers utilise, an assumption that the demand is equal to future residents (a mix of families and single parent households) is highly arguable.

It would appear that future employees are paying a disproportionate amount for library and child care facilities. The assumptions on which the CP is founded are not sound as future employment demand is not likely to create similar demands as local residents. Even though the CP indicates that workers that are residents have been discounted from the calculations, the above figures indicate that this may not be the case. In any event, it would appear that the rates for community facilities for employment growth are not reasonable.

A recalculation of the demand has been undertaken based on the above which indicates that future employment growth should be responsible for 4% of the library facilities and 5% of child care facilities.

## A.5. Recreation and Open Space Facilities

The CP also levies workers for recreation facilities and 19% of the proposed works program is to be funded by such land uses. This appears to be founded on a Council study which indicated that workers used open space at the rate of 19% of residents although it is noted that the types of recreation facilities are not specifically listed (which is a significant omission).

Regardless of this observation, the figures used in the CP would only support a "rate" of 10% as follows:

### Population/Employment Figures

The following population and employment figures are provided in the CP:

- Population growth assumed – 3,039 residents.
- Employment growth assumed – 1,815 (page 66, Botany CP).

### Equivalent Population

To arrive at a total "equivalent resident" population, the 19% of future workers must be added to the total resident growth so that an appropriate apportionment can be calculated as follows:

- 1,815 workers x 19% = 345 "equivalent" residents
- Thus, 345 + 3,039 = 3,384 total "equivalent resident" demand

### Worker “Demand”

Thus, the 345 workers only represent 10% of this demand since dividing 345 by the 3,384 total “equivalent” residents gives the following:

- $345/3,384 = 10\%$  of “demand”

Consequently, by the CP’s own figures, the future employment growth should only contribute towards a maximum of 10% of facilities not the 19% that is suggested in the CP.

Notwithstanding the above, it is considered that the nexus between the demand for open space and recreation facilities outlined in the CP is weak. For example, the CP includes the following:

- Acquisition of open space.
- Embellishment of open space.
- Development of other facilities (pathways/cycleways, more recreation facilities, sports field works and upgrades.
- Upgrade of Botany Pool.

It is highly likely that the additional acquisition and embellishment of land for local open space (viz Section 5.5 of the CP) will take place wholly within residential areas. Consequently, the nexus for use of such open space by workers would be weakened. Similarly, the works for sports fields would also tend to significantly favour residents rather than workers.

It is considered that the CP has not adequately demonstrated that there is real demand for recreation facilities by the future worker population. Further, the subject development will provide areas of open space (care needed here regarding the risk assessment – which areas are we talking about specifically and who will be able to access them – needs discussion) for day-time use which is considered to lessen demand on Council facilities. Lastly, it is highly unusual for a CP to levy future employees for open space facilities (since the nexus is not present). Therefore, a contribution for recreation facilities cannot be recommended.

It is also noted that the CP does not indicate where local open space is to be acquired, embellished or improved which is contrary to clause 27(1)(h) EP&A Regulation 2000. The CP should indicate where facilities are to be located to demonstrate nexus between development and the works program.

## A.6. Transport Facilities

The CP identifies a range of transport management facilities. In relation to the subject site, which is located within the Banksmeadow South catchment, the following facilities are proposed to cater to demand:

- Traffic management works.
- Pedestrian mobility works.
- Shopping centre improvements.
- Botany Road and Stephen Street works.
- Exell Street works.
- Port Botany feeder extension (McPherson Street to Foreshore Road).
- Street lighting.

The total works in the Banksmeadow South catchment are \$21,600,000 which represents around 57% of the total transport works program for the LGA. The figures are shown in Table A.2 below

**Table A.2: Transport Works Program: Banksmeadow South**

Works Program Items	CP Cost
Rectification of road degradation by increased heavy vehicle use	\$ 800,000.00
Traffic Management	\$200,000.00
Pedestrian	\$50,000.00
Botany Road and Stephen Road	\$500,000.00
Exell Street	\$5,000,000.00
Port Botany feeder extension McPherson Street to Foreshore Road	\$15,000,000.00
Street Lighting	\$ 50,000.00
Total	\$21,600,000.00

Source: Botany CP, 2005 to 2101

The Port Botany feeder extension McPherson Street to Botany Road is clearly a major item in this catchment and it is noted that the works program for transport facilities (Table 4 to the CP), indicates that the Council will be funding a major proportion of this facility (some \$10.8 million in the period 2005 to 2010).

The proposal will be providing the Port Botany feeder extension as part of the concept plan. Consequently, there should be credit provided for this facility otherwise there will be double dipping (whereby the facility is provided by the proponent and a levy is also imposed for the same facility so that there is essentially a double payment).

Shopping centre improvements total \$1,685,000 of which \$539,200 (or 32%) is to be funded by future workers. The contribution that would be applicable for the subject proposal is some 33% of this contribution which appears inordinately high. The CP has no details of the manner in which this contribution has been derived (eg traffic impacts studies would be sufficient) and thus does not satisfy the nexus test. In light of this, no contribution can be recommended.

## A.7. Administration

The administration costs include costs of a recreation study and employment of a recreation officer. These are considered to be a not a cost that should be included in the CP as they were not procured for the purposes of the preparation of the section 94 CP which the various guidelines recommend. These have been excluded from the revised calculations.

## A.8. Basis of Contribution Calculations

There is a significant flaw in the way that employee yields are calculated in the Botany CP to arrive at a contribution which would lead to an unreasonable contribution.

The calculation of the applicable section 94 contributions for community facilities, recreation facilities and administration is based on an employee yield calculation or a site area calculation. If the derived employee figure is not correct, then the resulting section 94 contributions would be unreasonable. Similarly, if the use of a site area figure to arrive at a contribution does not reflect the demand generated by the development, the contribution would be unreasonable.

As noted above, the CP has included in some areas employee yields from the Sydney Airport and Port Botany which should be excluded. However, for the purposes of this report the employee forecasts are accepted.

The CP uses various worker rates per square metres of GFA to determine the calculations in accordance with Section 8 of the CP. These rates are at the heart of the calculation that the Council might make for the purposes of imposition of a contribution. As noted above, a contribution can only be imposed if it is reasonable.

Table 8.2 of the Botany CP indicates that, in the case of “Modern Multi-unit Industrial Complexes” used for transport / storage / warehousing, the rate is calculated on the basis of 1 worker per 86.6 square metres of gross floor area (GFA).

The total GFA for the subject proposal is 79,190 square metres, thus:

$$79,190/86.6 = 914 \text{ workers}$$

It is noted that this would equate to some 32% of the Council forecast employee for the period 2005 to 2010 for the entire LGA which is an extraordinarily high worker yield for a single site. It is noted that the subject site represents some 18 hectares of the 300 hectares of industrial land in the LGA. On any assessment, this yield could not be realistic nor reasonable. Indeed, it would point to the employee growth forecasts in the Botany CP as being flawed.

According to the RTA “*Guide to Traffic Generating Development*” (Version 2.2, 2002), car parking supply requirements for warehouses is 1 per 300 square metres of floorspace. This would lead to an employee figure (assuming all drive) of 241 (72,200 square metres divided by 300). If a rate of 1 worker per 30 square metres of office accommodation is calculated (225 workers) and added to this figure, a total worker yield for the site would be 466. This figure is thus used in the revised contributions calculation.

It is understood that Council officers in discussions have indicated that the RTA rate for warehouses should be used in terms of calculating car parking supply (which uses a similar employee rate as the CP). It is considered that the employee yield is more appropriately referenced to this figure.

The rate for traffic management contributions is based on a site area. The CP provides no other details of how demand is calculated. It is considered that the use of a site area as the basis for a contribution bears no relationship to the actual demand (traffic or otherwise) that might arise from the development of any particular site. For example, in the subject site, the existence of the Springvale Drain and requirements for flood mitigations works would serve to decrease the overall development potential of the site.

It would have been expected that a best practice CP would have assessed the likely traffic generated by all industrial and other traffic, and determined the facilities required to address any impacts identified. The Botany CP fails to provide any details of the manner in which demand has been identified and simply adopts a very substantial works program of almost \$40 million with virtually no justification.

The alternative method would be to apportion all of the traffic management facilities across all of the industrial areas rather than have individual catchments. The logic is that traffic impacts are highly interactive and these impacts are spread across the LGA, thus, the contribution should reflect this.

Consequently, for the purposes of this assessment, a contribution has been derived based on the site area but using the entire catchment of the Banksmeadow Precinct (north and south) which is approximately 300 hectares. The site represents 6% of the total industrial catchment area.

## A.9. Revised Section 94 Contributions

It is considered that the contributions that would ordinarily be imposed under the Botany Bay Section 94 Plan are unreasonable for the following reasons:

- The derivation of employment numbers is considered to be flawed which leads to a higher estimate of likely population numbers and, thus, and unreasonable contributions.
- The inferred nexus for facilities required as a result of employment growth is extremely tenuous given the types of facilities that the Council has identified.



Consequently, and based upon the principle that future employment growth should be responsible only for:

1. A contribution for library facilities and child care facilities based on an overall rate of 3% and 5% respectively.
2. A contribution transport facilities of 6% of the entire works program.

A summary of the contributions are set out below in Table A.3, as the reasonable contribution payable by the new development if the development was to be levied a section 94 contribution.

**Table A.3: Section 94 Contributions for Southlands – Botany CP**

Current Required S. 94 Contribution	Rate	Revised Contribution	Revised Development Contribution Proportion of Entire CP Works Program <sup>1</sup>
Community facility	\$11.00	\$5,126.00	1.2%
Administration	\$42.00	\$19,572.00	10%
Shopping Centre Improvements (City Wide)	\$188.00	\$87,608.00	37%
Open Space and Recreation	NA	Nil	0.6%
Transport Management	6% of works program for Banksmeadow	\$1,473,000	6%
<b>Total Payment Required</b>		<b>\$1,585,306.00</b>	

Note:

1. The % proportion of the works program is the share of future worker responsibility under the Botany CP.

As indicated above, the proposal includes the construction of the Port Botany feeder road (Southlands Feeder Road) which has a CP value of \$15 million, although with a total cost to proponent of some \$26 million). The above contribution includes this facility and, thus, there is a need to factor in a credit on the basis that the project will provide this MPB in total along with a range of other MPB's as set out earlier in the main report.

The above table does NOT include any offset that would be available by the Proponent providing a Material Public Benefit within and external to the development site.