

***Review of Developer Contributions and
Infrastructure Requirements***

***12 – 38 and 40 Bonar Street and 5 Loftus Street,
Arncliffe***

*Prepared for Department of Planning
by Michael von Kolpakow
16 February 2010*



TABLE OF CONTENTS

| | |
|---|----|
| 1. Introduction..... | 3 |
| 1.1 The Brief | 3 |
| 1.2 The Review Process | 3 |
| 2. The Proposal | 4 |
| 3. Council's view | 4 |
| 4. Proponent's view | 5 |
| 5. Where the key differences lie..... | 5 |
| 5.1 Valuations | 5 |
| 5.2 Contentious issues | 6 |
| 5.3 Bonar Street: Widening western side, landscaped median, raised threshold, streetscaping..... | 7 |
| 5.4 Widening of Hirst Street and Streetscaping of Loftus and Hirst Streets | 8 |
| 5.5 Stormwater..... | 8 |
| 5.6 33kV State Rail power lines..... | 9 |
| 5.7 Other issues | 11 |
| 6. Conclusion and general comments..... | 11 |
| 6.1 Areas for improvement | 11 |
| Appendix 1: Meetings..... | 13 |
| Appendix 2: S94 Contribution towards provision or improvement of amenities or services | 14 |



MvK and Associates Pty Ltd
ABN 57 088 932 816

0419 169 300 mobile
(+612) 9660 0317 ph/fx
mvk@bigpond.net.au

1. Introduction

Mvk and Associates has been asked to conduct a review of developer contributions and infrastructure requirements for a proposed development at Bonar and Loftus streets, Arncliffe. The proponent is Meriton Apartments.

1.1 The Brief

The scope of work required by the Department of Planning (DOP) includes the following:

- 1. A review establishing an appropriate level of developer contributions and infrastructure for MP09-0148 - residential flat development at 12 - 40 Bonar Street and 5 Loftus Street, Arncliffe, in the context of the entire Bonar Street precinct.*
- 2. The review will take into account Rockdale DCP No.80 - Bonar Street Precinct 2008 and Rockdale Section 94 Contributions Plan 2004 (incorporating Amendments 1 - 4), infrastructure requirements for the site (including valuation and timing), and correspondence from Rockdale City Council and the proponent (Meriton).*
- 3. Discussion with Rockdale City Council and the proponent may be required.*
- 4. Provision of a written report to the NSW Department of Planning.*

1.2 The Review Process

The review incorporates the following key steps:

- Inception and Review of Council planning instruments and policies
- Research and Interview phase
- Report
 - Brief description of the proposal
 - Council's view
 - Proponent's view
 - Evaluation and Recommendations

The conclusion will also comment on the process pointing out steps in the overall process which may be able to be improved in future.

It is pointed out that Council has decided to use both s94 and S80A of the Environmental Planning and Assessment Act (EPA Act) for the provision of this infrastructure. Approvals under Part 3A are of course a different process than Part 4 of the EPA Act but it is not the role of this review to delve into the detail of the legal issues and how the contributions or works in kind are obtained or applied.

This review will make recommendations from a broader planning perspective, based on the principles of nexus and equity.

It is also acknowledged that while this development is being assessed under Part 3A and that technically the suggested conditions by Council do not directly apply, there has been

considerable discussion between Meriton, Council and the DOP based on these conditions and accordingly they will form the basis for consideration in this review.

2. The Proposal

The proposal is submitted under Part 3A of the Environmental Planning and Assessment Act 1979. The environmental assessment report submitted by the proponent summarises the proposal as follows:

The proposed development seeks approval to:

- excavate the site and undertake dewatering of the site;
- construct basement levels with parking for 443 vehicles;
- erect four apartments buildings containing a total of 305 residential apartments; and
- undertake associated landscaping works.

3. Council's view

Rockdale Council has been planning for the redevelopment of Bonar Street Precinct (as well as the remainder of the Council area) for a considerable period of time.

The most relevant Council documents specifically relating to this site are:

- Rockdale Local Environmental Plan 2000 (as amended by Amendment No 29 and Amendment No 48)
- Development Control Plan 80 – Bonar Street Precinct, (adopted 21 September 2005 and effective 31 October 2008).
- Rockdale Section 94 Contributions Plan 2004.

The Bonar Street Precinct is planned as a '*predominantly high residential area*' which will accommodate a significant component of the Council's growth during the life of the S94 Plan and beyond.

In its letter to the DOP dated 21 January 2010, Council sets out a cogent case for the contributions required for this development in relation to the Precinct as a whole. Council states that it has always argued that the developers '*...must meet the full costs of the necessary infrastructure and that Council is not in the position to prefund or subsidise the works.*'

The argument continues that some of the works, particularly the flood mitigation works are '*unevenly distributed*' and that some of the individual sites might not be viable if they bore the full cost of works related to their site. This is a compelling argument from a broader planning perspective or the precinct wide approach. However the test to be applied in each instance is whether the development which does not contribute to the problem will benefit in some way from these works.

Although not directly relevant to this review, it appears that Council has made considerable effort to undertake reasonable research and provide justification for its position.

4. Proponent's view

The proponent consistently argues that nexus is the fundamental basis in determining whether the developer should provide contributions or infrastructure. That is '*does the development create demand for infrastructure or services*'. If the answer is yes then it is reasonable that the developer pay the relevant proportion of the works generated by the development.

In some cases this test can be readily applied. More often however, there are areas of grey as to the relationship between the development and the infrastructure. Nevertheless this is a sound basis for considering what could reasonably be expected to be provided by the developer as a consequence of the development.

In terms of the process leading to Council's current DCP 80 and S94 Plan, there are also significantly different views held by Council and the proponent. Council writes (*letter to DOP 21 January 2010*) that there was close involvement by Meriton from the time the land was purchased in 2004 and that these documents '*...reflect the outcomes of these discussions.*'

Meriton (*Walter Gordon, meeting with MvK 11 February*) stated that their views were not really listened to and the outcomes reflected Council's preferences.

5. Where the key differences lie

The main areas of difference between Council and Meriton lie in both the types of infrastructure relating to the development and also the valuations of these works.

5.1 Valuations

There is significant variation in the valuations and costings used by Meriton and Council. In almost all instances (except a roundabout at Bonar/Hirst Streets), Meriton estimates are considerably higher, sometimes 40% or more.

Meriton have advised that their higher costs are primarily due to the potential costs associated with unidentified underground services including water, sewer, gas and telecommunications. Hence Meriton has added additional contingencies to allow for working in the vicinity of these services, or having to relocate or replace them.

Council has provided a detailed schedule of cost estimates prepared by WT Partnership, quantity surveyors, which have been used in their s94 Plan. While it does not appear that a survey of existing infrastructure has been undertaken, the costings contain assumptions about what might reasonably be expected to be found.

Meriton's concerns about potential unknown costs are based on their considerable experience as developers in existing urban areas. Council is of course also experienced in understanding these types of costs within its LGA and has used a reputable firm with considerable local and international experience to prepare the base cost estimates.

For the purpose of this review, the figures provided by Council will be used given the amount of detail provided in the cost schedule. It would not however be surprising if these costs are exceeded on occasions when unexpected services are uncovered. Meriton's estimates might well serve as 'upper limit' estimates.

Note also that costs do not include GST.

Review of Developer Contributions Bonar Street, Arncliffe
MvK & Associates
February 2010

5.2 Contentious issues

This section addresses each of the contentious issues based on the summary of conditions provided by Council in its letter dated 21 January 2010. The tables below summarise the key points from Council's letter.

| Original Condition # | Works | New Condition # | Council cost |
|----------------------|--|-----------------|------------------------|
| 5(a) | Widening of western side of Bonar Street | 5A(a) | \$846,972 |
| 5(b) | Central median and swale in Bonar Street | 5(a) | \$187,322 |
| 5(c) | Raised threshold in Bonar Street | 5A(b) | Inc in 5 (a) |
| 5(d) | Stormwater drainage within Bonar Street | 5(b) | \$197,961 |
| 5(e) | Widening northern side of Hirst Street | 5A(c) | \$267,988 |
| 5(f) | Trunk drainage under Bonar St/Hirst St intersection | 5(c) | \$300,204 |
| 5(g) | Trunk drainage through 45 Bonar Street | Deleted | na |
| 5(h) | Roundabout at Bonar Street/Hirst Street intersection | 5(d) | \$99,711 |
| 5(i) | On-street parking around perimeter of site | 5A(d) | Inc in 5(a),5(e) |
| 5(j) | Upgrade bus stop in Loftus Street | Deleted | na |
| 5(k) | Undergrounding of State Rail 33kV power lines | 5(e) | \$1,959,563 |
| 5(l) | Streetscaping on southern side of Hirst Street | Deleted | \$401,399 ¹ |
| 5(m) | Gross pollutant trap in 45 Bonar Street | Deleted | na |
| 5(n) | Stormwater drainage along northern side of site (ie swale on Meriton land) | 5B | \$292,727 ² |
| 5(o) | Streetscaping the street frontages of the site | 5A(e) (amended) | |

1. Council has deleted this condition as Meriton will not undertake as WIK – monetary contribution in lieu is proposed by Council
2. Meriton estimate – not costed by Council

Note that all of the following items are considered by Council to be included in items under condition 5 as shown above. Hence no additional costs are identified by Council.

| | | |
|-------------|---|-------------------|
| 7(i) – (ii) | Amend Hirst Street blister/kerb ext'n (N Side) | Inc in 5(h) |
| 7 (iii) | Amend Hirst Street Blister S Side | Inc in 5(h) |
| 7 (iv) | Adjust levels in Bonar Street | Inc in 5(c) |
| 7 (v) | New pedestrian refuges in Bonar Street | Inc in 5(a), 5(b) |
| 7 (vi) | Extension of Bonar Street bio-swale | Inc in 5(b) |
| 7 (vii) | Realign kerb returns at Bonar Street/new Road W | Inc in 5 (a) |
| 7 (viii) | Amend tree bays in Loftus Street | Inc in 5 (o) |

5.3 Bonar Street: Widening western side, landscaped median, raised threshold, streetscaping.

Council requires widening of Bonar Street to '*...facilitate appropriate traffic circulation, provide adequate on-street parking facilities and allow a level of streetscaping commensurate with the high quality residential development intended.*'

Meriton argues through a letter from their traffic consultant (Ross Nettle, 8 February 2010) that the capacity of the roadway is not increased by the widening proposed and that the widening is driven by urban design ideals rather than traffic engineering necessity. The same letter also states that the street does not have any proposed or envisaged provision for cyclist or buses. DCP 80 however, clearly shows a primary and secondary cycle/pedestrian route along Bonar Street (Map 14).

Neither DCP 80 nor the S94 Plan claim that more traffic will be generated by the development requiring road widening. Hence the statement by Nettle is correct to the extent that the widening will not provide for more vehicle movements. DCP 80 does however refer to concentrating vehicle movements on the southern section of Bonar Street and as mentioned above also provides for cycle routes on both sides of the road. Based on urban design principles, there is some justification for widening of Bonar Street in the area.

The land use is changing to one which probably generates more private vehicle movements over a greater time period (ie evenings) than would be expected from industrial or commercial development. Parking bays as proposed by Council are considered appropriate for this type of development activity. Although the proponent is proposing reasonable off street parking, there will always be a need for some on street parking which will be generated by the development.

Upgrading the road to better manage vehicle movements is also considered quite appropriate. Council's statement that the internal roads, existing or proposed are reasonably evenly distributed and so each developer should pay for their adjoining streets, is considered fair and reasonable.

Meriton has agreed to accept a condition requiring dedication of land for road widening purposes (*letter 25 January 2010*). In the same letter Meriton agrees to '*...beautification works immediately adjacent to our site on Loftus, Hirst St and Bonar Street*', but is however opposed to paying for upgrading of the road for flood mitigation works. If Meriton were required to upgrade Bonar Street now, this matter is complicated by Council's proposal to raise Bonar Street by up to 1.5 metres to redirect existing stormwater flows to a defined location to the south. It could be some time before the development on the other side of Bonar Street occurs and it is not really practical or efficient for half road widening to take place now while final levels are unknown.

This then has consequences for the proposed footpath upgrades and any other roadworks which Meriton might be required to undertake on its side of Bonar Street. Meriton has agreed to streetscaping in accordance with Council's proposal (original condition5(o)). As it is not considered feasible for Meriton to undertake works in kind along Bonar Street now it is recommended that Meriton contribute directly to the upgrading and streetscaping for half the road. This includes the roundabout on Bonar and Hirst Street intersection.

If Council's costings of \$846,972 for widening and \$187,322 for the landscaped median and swale are used this equates to an additional \$3,391per unit. This does **not** include streetscape improvements of Bonar Street which has not been costed by Council but could be considerable based on Council estimates for similar works along the south side

of Hirst Street of \$401,000. Meriton has agreed to undertake streetscape works so in this instance a payment in lieu of works will need to be determined.

Recommendation: Meriton be required to dedicate the strip of road widening and pay for half road reconstruction plus half the landscaped median strip and streetscape improvements for the western side of Bonar Street.

Council's costs of works are \$846,972 for widening plus \$93,661 for landscape half median, plus streetscaping costs to be determined. These will need to be paid as a contribution as works in kind are not feasible at present.

5.4 Widening of Hirst Street and Streetscaping of Loftus and Hirst Streets

As for Bonar Street, Council's argument for improvements on roads adjoining the site are considered appropriate from an urban design perspective for Hirst and Loftus Streets. Meriton will be required to carry out these works on the north side of Hirst Street and east side of Loftus Street in conjunction with development of the site as the levels are unlikely to change.

The roundabout on the corner of Hirst and Bonar should also be paid for by Meriton given its prominent location on a significant corner of the development. Ideally this would be undertaken as works in kind but timing of Bonar Street reconstruction may not permit this to occur.

One component which is not considered to be reasonable is Council's requirement for the streetscaping on the south side of Hirst Street. This is the boundary of the Bonar Street Precinct and is fronted by existing dwellings. While Council's desire to upgrade the whole road is understood it is difficult to justify the proponent paying for improvements on this side. Meriton has costed these works at \$734,000 while Council claims \$401,000 would be required.

Recommendation: Meriton to dedicate the widening along Hirst Street and undertake works in kind for streetscaping of Hirst Street (north side only) and Loftus Street (east side).

Council's costs of works are \$267,998 for widening the northern side of Hirst Street plus costs to be determined for streetscaping Hirst Street and for streetscaping Loftus Street. These works to be undertaken as works in kind should be undertaken as works in kind.

Council's cost estimate for the roundabout is \$99,711 which would need to be paid if works in kind are not possible.

5.5 Stormwater

The precinct wide approach adopted by Council in terms of apportioning costs is understood and accepted in principle. However, in practice it cannot be applied to all situations. It is considered that stormwater systems catering for local flooding fall into this grey area.

Purchasers of land which is clearly affected by local flooding should expect to pay less for their land than a parcel which is clearly not so affected as the cost of remedying this flooding would generally be taken into consideration. An argument that a S94 plan which apportions costs across a precinct should level out such price differences would not necessarily reassure a potential purchaser of affected land that his costs will be less. In

any case if the land were purchased prior to such a S94 plan being implemented the cost would have reflected the situation at the time.

In short a developer of affected land would normally have paid less, taking into account future drainage costs and, in this case, Meriton may have paid more on the assumption that no major drainage works are required.

Considering the nexus argument under s94 (1) of the EPA Act, it can be clearly argued that the Meriton site does not appear to contribute significant run off to the downstream systems. Meriton's consultant (*letter 9 February 2010*) concludes, '*...the proposed works, ..., will have no significant affect on flood levels or flows in surrounding properties.*'

From discussion with Council officers this appears to be agreed. This is supported by 6.1.2(b) of DCP 80 which states that '*Development on the Western side of Bonar Street can be completed and occupied without implementing the Stage 1 stormwater works*'.

Notwithstanding the precinct wide approach it is difficult to establish a nexus between the proposed development and all of the proposed drainage works. In this case the proposed stormwater system on the corner of Hirst and Bonar Streets and the Gross pollutant trap in the vicinity fall into this category as these works appear to be addressing an existing problem and do not appear to be required as a result of the new Meriton Development.

The swale on the northern boundary required by Council (costed at \$293,000 by Meriton, not costed by Council) appears to serve the purpose of directing water around the subject land. At one point Meriton representatives verbally expressed some concerns about this swale, arguing that the provision of soft surfaces in their development and on-site detention would adequately manage flows. In the letter from Meriton to the DOP on 25 January 2010, however, Meriton have agreed to construction of the drainage swale at their own cost.

Council has also advised (*letter 15 February 2010*) that the drainage from the northern section of the site cannot be accommodated in the existing stormwater pipe in Bonar Street and would result in surcharging and more downstream problems. Council believes that upgrading of this pipe can be undertaken even if Bonar Street is upgraded now. Costing of this pipe by Council was specified as \$197,961(new condition 5(b)).

Recommendation: Meriton not be required to pay towards major trunk drainage works unrelated to their site (condition 5(c)). Upgrade of the existing Bonar Street drainage is required and can be undertaken as works in kind prior to any upgrading of Bonar Road. Council's cost estimate to upgrade the existing pipe is \$197,961.

The component of the half Bonar Street upgrade including the raised threshold, which is required for stormwater purposes should also be paid by Meriton as it is relatively minor and included in the costing for widening the western side of Bonar Street.

5.6 33kV State Rail power lines

Council is keen to underground these lines for aesthetic/urban design purposes. State Rail is not opposed to undergrounding of these lines. Meriton has made an assessment that the lines as they currently stand, will not adversely impact on the appearance, marketability or sales of their development.

Council's approach to dealing with these lines appears to have been that Sites 1 and 7 (which have the lines running along adjacent streets) should provide conduits for future

undergrounding. Site 2, the Meriton land should pay all cost of undergrounding through the precinct. No other parcels are expected to pay anything (including Site 3 on the eastern side of Bonar Street). This rationale appears to be based on the fact that the Meriton land is the site most affected by the line. Council estimates the total length to be undergrounded at 670m. The frontage of the Meriton land affected is approximately 270m.

While the proponent and State Rail are agreeable to the line remaining as it is, the proposed widening of Bonar and Hirst Streets means that relocation out of the roadway onto the new footpath would be required. This would most likely result in the lines being unacceptably close to the new development. Hence undergrounding would be required.

While the lines are directly adjacent to the Meriton land along Hirst and Bonar Streets, it can be argued that if there are in fact aesthetic issues, they relate more to the precinct from people moving through the area and viewing the lines from the street. Meriton, as experienced developers, should be able to judge whether the lines will influence their future purchasers. It is clearly not in Meriton's interest to retain any feature which would adversely impact on sales. Walter Gordon pointed out that in some of their other developments the decision was made to underground lines as this would significantly improve the development and the area in general. In this case, Meriton consider the visual intrusion to be insignificant.

The costings by Council and Meriton are almost comparable on this occasion. Meriton claims a figure of \$2.27 with Council's figure being \$1.96 million. The difference of 15% is not unreasonable.

It should be noted that Meriton has suggested an additional \$2.9 million will be required for undergrounding of other associated services (primarily communications and Energy Australia lines on the same poles for part of the system along Bonar Street). Council states that these other services do not need be to relocated at this stage.

In light of the significant costs involved, the uncertainty regarding existing services underground and the uncertainty about funding the longer term relocation of associated telecommunication and Energy Australia services, the undergrounding of these lines becomes problematic.

It does not seem reasonable that one developer bear the total cost of undergrounding these services. As these lines more or less pass through the heart of the precinct, it is considered that a reasonable solution is that individual sites are responsible for installing conduits in the relevant adjacent roads (or paying a cash contribution if not able to be undertaken immediately).

The cost of undergrounding the line should be borne by all in the precinct. This is consistent with the precinct wide approach. While it is acknowledged that the benefits to the broader precinct may not be apparent in some cases, it is not reasonable that one major developer with less than half the line should bear the full cost. Individual developers are still responsible for paying for the laying of conduits.

Based on advice by Les Edgar, the estimated population of Bonar Street Precinct will be 2,542. The Meriton proposal will accommodate $(41 \times 1.32) + (239 \times 2.1) + (24 \times 2.56)$ people = 618.

Recommendation: Meriton should pay for the appropriate conduits (Bonar Street) or undertake the conduit installation as works in kind where possible (Hirst Street).

Total Council estimated cost of the undergrounding of the 33kV line is \$1,959,563 and will be apportioned evenly throughout the Precinct based on proportion of the population. Meriton's portion would then be \$476,400.

5.7 Other issues

This section addresses the key issues, namely where significant works are involved which have monetary or timing implications.

It is considered that all areas of contention have been addressed. The letter from Council dated 21 January 2010 refers to a number of detailed matters under condition 7 shown which are not specifically addressed above. However the same principles can be applied to each of these, viz adjacent roadworks (including roundabouts) should be undertaken by Meriton but works related to solving drainage issues unrelated to the site should not be Meriton's responsibility.

The proponent has also offered to pay for undergrounding of electrical wires on all street frontages, including Loftus Street (not the 33kV line however).

It is also noted that in addition to the above matters, the proponent has agreed to pay s94 contributions totalling \$2,411,019.32 for regional and city wide facilities.

6. Conclusion and general comments

This review has attempted to provide a rational and equitable approach to provision of infrastructure to meet the needs of both the proposed development and the Bonar Street Precinct.

The recommendations take into account Council's objectives as set out in DCP 80 and the s94 Plan, and the objectives of the proponent in providing dwellings appropriate for the local area. Broader objectives relevant not only to the Council and the developer but also to the State government include consideration of affordability and timing issues. This latter requires balancing proper consideration of the issues without undue delay for the proponent.

This review has had to consider the complexities faced by Council in dealing with the cap on s94 contributions. In this context, Council's use of s80A as an alternative is understood but it also causes new problems in that collecting payment for future works becomes difficult.

6.1 Areas for improvement

It is recognised that if the recommendations of this review are adopted, there will be implications for Council in relation to DCP 80, the s94 Plan and finances generally.

This is an unfortunate consequence and it is important to recognise that Council has put much time and effort into the planning of Bonar Street. This review should not reflect adversely on that work.

If there is one area which could be addressed it is probably that of involvement of the development industry in the early stages. Council states that it did involve the proponent and that the subsequent documentation flowed out of a joint process. The proponent

however does not necessarily feel that Meriton was given a fair hearing with the consequence that their concerns were not incorporated.

As difficult and time consuming as it can be, reaching agreement on general principles early in the process can save considerable time and money down the track. It can also overcome the type of problem which has now arisen where the planning documents such as the DCP and s94 Plan may be compromised.

Finally it is important to recognise the spirit of cooperation shown by Council officers and Meriton representatives. Both parties have demonstrated a positive approach and willingness to cooperate and have provided all information necessary to complete this review. It is also noted that both parties have already modified their positions in recent times in favour of the other party.

With this approach it is considered that a mutually agreeable solution can be negotiated.

Appendix 1: Meetings

9 February 2010

DOP Head Office, Bridge Street

| | |
|-------------------|-----|
| Anthony Witherdin | DOP |
| Pilar Aberasturi | DOP |

- Formal briefing of review requirements
- Ensure all information has been or will be provided
- Discussion of timetable (agreed for COB Monday at latest)

11 February 2010

Meriton Head Office, Kent Street

| | |
|----------------------------|---------|
| Walter Gordon | Meriton |
| Andrew Coleman | Meriton |
| Ben ? | Meriton |
| Peter Spira (part meeting) | Meriton |

- General discussion on proposal and process
- Some contributions not relating to nexus
- Some valuations (eg undergrounding of 33kV not being realistic)
- Consultation process for DCP 80 and s94 Plan did not take into account developer objections
- Unrealistic expectations re timing of works in-kind (eg requirement for reconstruction of Bonar Street now means raising half road only by 1500 mm)

12 February 2010

On Site – Bonar Street

| | |
|---------------|-----------------------|
| Les Edgar | Rockdale City Council |
| Stephen Kerr | Rockdale City Council |
| Colin Mable | Rockdale City Council |
| Marta M Sadek | Rockdale City Council |
| Muhammed ? | Rockdale City Council |

- Stressed precinct wide approach, same principle as greenfields release which requires contribution to facilities over whole area
- Explained key issues, viz 33kV lines, road widening, drainage
- Referred to Meriton involvement in DCP and s94 workshops

15, 16 February 2010

Phone calls to Walter Gordon, Les Edgar, Anthony Witherdin, Andrew Coleman

Appendix 2: S94 Contribution towards provision or improvement of amenities or services

(1) If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:

- (a) the dedication of land free of cost, or
- (b) the payment of a monetary contribution, or both.

(2) A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.

(3) If:

- (a) a consent authority has, at any time, whether before or after the date of commencement of this Part, provided public amenities or public services within the area in preparation for or to facilitate the carrying out of development in the area, and
- (b) development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,

the consent authority may grant the development consent subject to a condition requiring the payment of a monetary contribution towards recoupment of the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations).

(4) A condition referred to in subsection (3) may be imposed only to require a reasonable contribution towards recoupment of the cost concerned.

(5) The consent authority may accept:

- (a) the dedication of land in part or full satisfaction of a condition imposed in accordance with subsection (3), or
- (b) the provision of a material public benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition imposed in accordance with subsection (1) or (3).

(6) If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, 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, other than:

- (a) a benefit provided as a condition of the grant of development consent under this Act, or
- (b) a benefit excluded from consideration under section 93F (6).

(7) If:

- (a) a condition imposed under subsection (1) or (3) in relation to development has been complied with, and
- (b) a public authority would, but for this subsection, be entitled under any other Act to require, in relation to or in connection with that development, a dedication of land or payment of money in respect of the provision of public amenities or public services or both,

then, despite that other Act, compliance with the condition referred to in paragraph (a) is taken to have satisfied the requirement referred to in paragraph (b) to the extent of the value (determined, if the regulations so provide, in accordance with the regulations) of the land dedicated or the amount of money paid in compliance with the

condition.<http://www.legislation.nsw.gov.au/fragview/inforce/act+203+1979+pt.4-div.6-sdiv.3-sec.94+0+N?toctnav=y> - top