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Dear Sir/Madam

### **ADVICE REGARDING DEVELOPMENT CONTRIBUTIONS AND THE PROVISION OF PUBLIC CAR PARKING IN MERIMBULA**

Zenith Town Planning has been engaged to provide advice regarding the provision of public car parking in the town centre of Merimbula and the historical use of development contributions received for commercial development approvals.

This advice has been guided by documentation supplied by Bega Valley Shire Council including correspondence from commercial land owners, memorandums to councillors, a selection of consents issued that contained conditions requiring the payment of contributions and data extracted from Council's register of development consents. The advice has also had regard to Division 7.1 Development Contributions of the *Environmental Planning and Assessment Act 1979* (formerly Division 6 before the introduction of the *Environmental Planning and Assessment Amendment Act 2017* on 1 March 2018), Part 4 Development Contributions of the *Environmental Planning and Assessment Regulation 2000*, *Development Contributions Practice Notes - July 2005* issued by the Department of Infrastructure, Planning and Natural Resources, *Bega Valley Section 94 and 94A Contributions Plan 2014* and previous Council plans.

The objectives of this advice are to:

1. Respond to a range of questions which relate to Council's compliance with applicable legislation and policy regarding the levying and management of development contributions since the 1960s, the timing and obligations of Council regarding the provision of public car parking for which contributions have been levied, and Council's response to queries from the owners of commercial land in Merimbula

2. Review Council's *Section 94 and 94A Contributions Plan 2014* prepared by GLN Planning and adopted by Council in February 2015
3. Provide a response to questions raised in correspondence regarding the spatial provision of car parking, Council's obligations pursuant to the *Environmental Planning & Assessment Regulation 2000* and the *Development Contributions - Practice Note* issued by DIPNR in July 2005

The advice provided below responds to these objectives. Details of legislation and policy governing the application of development contributions is given as background with an explanation of the principles of development contributions.

Other than outlining Council's legal accounting obligations with respect to managing development contributions, this advice does not address matters that relate to the financial management of contributions received by Council. A response to matters raised by Council and land owners is given in broad terms.

### **AN EXPLANATION OF DEVELOPMENT CONTRIBUTIONS AND CONTRIBUTIONS PLANS**

Development contributions are payments made by a proponent of a development to a consent authority, such as Bega Valley Shire Council, to assist with the provision of public services and facilities.

Council is authorised under Section 7.11 (formerly section 94 before 1 March 2018) and section 7.12 (formerly section 94A before 1 March 2018) of the *Environmental Planning and Assessment Act 1979* to impose conditions of consent that require development contributions to be paid where the development will or is likely to generate demand for services and facilities.

The overall purpose of development contributions is to maintain the existing standard of provision of services and facilities by supplying additional new services and facilities, or to extend or augment those services and facilities using contributions.

Contributions may be levied for infrastructure such as community buildings, open space, roads, car parking, pathways and waste management. Water supply and sewerage services are excluded as they are provided in accordance with provisions of the *Local Government Act 1993*.

Contributions can be levied as financial payments, the dedication of land, works-in-kind or any combination of these. Contributions may also be retrospective to seek the reimbursement of costs associated with the provision of existing services and facilities and may be indexed annually.

Section 27 of the *Environmental Planning and Assessment Regulation 2000* stipulates that a contributions plan must include the following details:

- (a) *the purpose of the plan,*
- (b) *the land to which the plan applies,*
- (c) *the relationship between the expected types of development in the area to which the plan applies and the demand for additional public amenities and services to meet that development,*
- (d) *the formulas to be used for determining the section 94 contributions required for different categories of public amenities and services,*
- (e) *the section 7.11 contribution rates for different types of development, as specified in a schedule to the plan,*
- (g) *the council's policy concerning the timing of the payment of monetary section 7.11 contributions, section 7.12 levies and the imposition of section 94 conditions or section 7.12 conditions that allow deferred or periodic payment,*
- (h) *a map showing the specific public amenities and services proposed to be provided by the council, supported by a works schedule that contains an estimate of their cost and staging (whether by reference to dates or thresholds),*

Council may only impose a condition requiring contributions under either section 7.11 (formerly section 94) or 7.12 (formerly section 94A), but not both, that is in accordance with a contributions plan. The Honourable Justice Craig found in the Land and Environment Court case *Australian International Academy of Education Inc v The Hills Shire Council [2013]* that section 94, coupled with the requirement for a contributions plan made in accordance with section 94AE, provides the sole source of statutory power to impose a condition of development consent either requiring the payment of a monetary contribution or requiring the dedication of land. This principle was also made in *Fitch v Shoalhaven City Council [1987]* and in *Fairfield City Council v N & S Olivieri Pty Ltd [2003]*.

In the case of section 7.12, levies are based on a percentage of the proposed cost of carrying out a development. Alternatively, Council and the proponent of a development may negotiate a planning agreement under section 7.4 (formerly section 93F) of the EPA Act that specifies the contributions to be made to Council before the development may proceed.

The *Development Contributions Practice notes – July 2005* comprise a series of separate practice notes that address the key concepts and principles of development contributions, preparing a section 7.11 (formerly section 94) contributions plan and the review, accountability and reporting requirements of local government. A contributions plan template is also provided in the document. Practice notes are also provided for 7.12 (formerly section 94A) and planning agreements. The practice notes are intended to be a guide for councils and are not statutory.

## **THE PRINCIPLES OF DEVELOPMENT CONTRIBUTIONS**

Legislation governing the application of development contributions is predicated on the concepts of reasonableness and accountability.

## Reasonableness

Contributions may only be levied where it is reasonable to do so and where they are justified based on the demand generated for services and facilities by a development over time and at a particular place. Reasonableness also concerns the apportionment of the share of usage of those services and facilities that is attributed to a development. These underlying principles of development contributions are referred to as nexus and apportionment.

As stated in the *Development Contributions Practice Notes* '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. The requirement to satisfy nexus is one of the core components of a valid development contributions plan and is a specific requirement of clause 27(1)(C) of the *EP&A Regulation*.'

Establishing nexus in a contributions plan requires Council to:

- demonstrate that development actually creates a need or increases the demand for a particular public facility,
- identify the types of facilities to cater to that demand,
- determine the capacity and standard of existing services and facilities, and
- to nominate the timeframe within which additional services and facilities are to be provided, or existing services and facilities are to be embellished.

Apportionment is a means to ensure that the incoming population resulting from new development only pays for its share of the total demand for a service or facility. A contribution made under section 7.11 (formerly section 94) must reflect the demand generated by development and must be proportional to that demand.

The principle of apportionment requires Council to identify the proportional needs of the existing community and the needs of growth resulting from development in order to calculate contribution rates in a section 7.11 (formerly section 94) contributions plan.

Full cost recovery is only feasible where a service or facility is provided to meet the level of demand expected by new development only and there is no facility or spare capacity available in the area.

## Accountability

Accountability relates to completion of a works program adopted by a development contributions plan and the reasonable time in which a particular service or facility is provided. Accountability also relates to the financial management of contributions collected by Council.

Section 7.3 (formerly section 93E) of the EPA Act requires Council to hold any financial contribution for the purpose for which it was required, and to apply the money towards that purpose within a

reasonable time. Similarly, land that has been dedicated as a contribution is to be made available by Council for the purpose for which it was dedicated within a reasonable time.

The works schedule of a contributions plan specifies the planned timing for the provision of the facility based on the expected rate of growth or development and the anticipated receipt of contributions. A contributions plan may allow for the timing of the provision of a service or facility based on thresholds such as reaching a specified population or the development of a nominated area of floorspace.

Alternatively, Council may elect to pool funds collected as contributions or supplement contributions with borrowings or general funds to provide a service or facility either in a nominated timeframe or to meet demand. Any borrowings or use of general funds may be reimbursed over time by way of contributions.

Section 35 of the EPA Regulation proscribes Council's obligations regarding the management of collected development contributions. Contributions are to be held in separate accounts to other monies held by Council. Accounting records are to be maintained that show amounts collected, the purpose for which they have been collected, the pooling or use of funds for other purposes, and the expenditure of contributions on services and facilities. Council must provide details in its annual financial report of the opening and closing balances, funds collected and the purpose for collection, expenditure on services and facilities, and any outstanding obligations.

## **A BRIEF HISTORY OF DEVELOPMENT CONTRIBUTIONS IN NSW**

Below is a brief history of the application of development contributions in NSW. This has been sourced from **e-brief 3/2011** issued by the NSW Parliamentary Library Research Service in March 2011.

Legislation concerning development contributions was introduced by section 94 of the *EPA Act 1979*. Prior to then contributions were able to be levied on development and subdivision approvals to ensure that public infrastructure was sufficient to meet the demand generated by growth. The application of contributions was unregulated before 1979 so Councils were able to levy contributions on the basis of cost neutrality. In response to the Simpson Enquiry in 1989 and to ensure transparency, the *EPA Amendment (Contributions Plans) Act 1991* required councils to prepare and exhibit contributions plans in order to impose levies.

Reforms to the development contributions process were made in 2005 which introduced voluntary planning agreements and section 94A levies fixed at a maximum of 1% of development costs. Further reforms were introduced in 2006 to enable special infrastructure contributions to be levied by the state government for regional infrastructure, affordable housing and environmental conservation. A Ministerial Direction introduced in 2006 set further restrictions as to the circumstances where section 94A levies are able to be imposed by specifying a tiered level of fixed levies relating to development costs.

Non-statutory reforms were made in 2007 by way of a planning circular which clarified the types of local infrastructure able to be funded by section 94 and 94A contributions. This excluded facilities that benefit existing communities and specified that only infrastructure directly related to a development site or a development precinct could be funded. The types of local services allowed to be funded by contributions are roads, bus infrastructure, open space, drainage and water management facilities, and land for other community infrastructure and recreation facilities.

The NSW Government established a review of the contributions system in 2008 to ensure that it supports housing and employment targets. The subsequent *EPA Amendment Act 2008* enacted further reforms which are yet to commence, such as to permit a section 94A fixed levy higher than 1% with Ministerial approval. In addition, various non-statutory reforms were outlined to reduce costs imposed on new housing including the capping of contributions for local infrastructure contributions for residential development and defining the role of IPART in the development and review of contributions plans.

The *Environmental Planning and Assessment Amendment Act 2017* caused the renumbering of sections of the *EPA Act 1979*, e.g. section 94 was renumbered section 7.11 and section 94A became section 7.12. There was no material change to the wording or effect of these provisions.

## **DEVELOPMENT CONTRIBUTIONS IN BEGA VALLEY SHIRE**

Details of the plans that enabled the collection of development contributions for public car parking in Bega Valley Shire from 1974 to the present day are provided in this section.

### **Interim Development Order No 2 Shire of Imlay**

This deemed environmental planning instrument was published in the *Government Gazette no 59* of 24 May 1974. Clause 9(e) of *IDO No 2* required Council to consider whether adequate space is made available for car parking on site for the type of development. *IDO No 2* did not contain a requirement for contributions where car parking could not be provided on-site. This did not preclude Council from levying contributions where physical spaces were not provided.

### **Bega Valley Shire Council Section 94 Contribution Plan No. 4 Carparking**

This original contributions plan was approved by Council on 22 June 1993 and came into effect on 1 July 1993. It was part of a suite of contributions plans adopted by Council on the same day following the Simpson Inquiry and amendment of the *EPA Act* to require Councils to prepare contributions plans in order to impose levies. It included *Contribution Plan No 3 – Water and Sewer Headworks* and *Contribution Plan No 5 – Recreational Facilities & Public Reserves*.

This plan permitted contributions in lieu of on-site car parking for development within a mapped area contained in Schedule 2 to the plan which showed the land within which Council may investigate acquisition of lands for future parking. Contributions for car parking in Merimbula were \$10,076.00

per space, comprising \$2,000 construction costs plus \$260.00 per square metre (1991 value estimate) and based on a car parking space of 30 square metres. How the total amount of \$9,800 was adjusted to be \$10,076 is not explained in the plan although reference is made to indexing using CPI every 12 months. The works schedule for Merimbula was:

- Construction of new car park on Lot 7 DP 252400 Park Street,
- Improvement to layout, landscaping and surfacing of the Palmer Street car park, and
- Formalising of Carparking arrangements at Beach Street.

The location of these car parking areas are shown on an aerial image sourced from SIX Maps on 12 December 2017. The imagery is dated January 2014.



**Figure 1: Car parking areas in Merimbula referred to in the works schedule for Contributions Plan No 2 (formerly No 4) Carparking**

The plan was amended on 27 March 2001, taking effect on 10 April 2001, to incorporate financial year consumer price indexing and on 12 November 2002, taking effect on 15 November 2002, to make reference to Bega Valley LEP 2002. It was again amended by Council on 22 July 2003, taking effect on 5 August 2003, by making an administrative change to the indexation clause and became *Bega Valley Shire Council Section 94 Contribution Plan No. 2 Carparking*. The rate of contributions and the car parking works schedule for Merimbula remained the same throughout these amendments.

The final amendment to *Section 94 Contribution Plan No. 2 Carparking* was made on 25 September 2007 taking effect on 3 October 2007 to revise contribution rates. Contributions again were based on construction and land acquisition costs. For Merimbula the rate became \$27,000 per space,

comprising construction costs of \$6,000 plus \$21,000 land value (based on a 2007 per square metre value of \$700 for a 30m<sup>2</sup> space). The schedule of works was also amended to read:

*The Merimbula carparking fund has a debt to the General Fund of \$183,983.69 (2007) resulting from Council's acquisition of the Palmer carpark area. (This debt excludes interest and construction costs reimbursement which Council has foregone).*

*Council will therefore reimburse the General Fund from future contributions until the sum of \$183,983.69 is repaid.*

*Additional contributions after reimbursement is completed will be applied to Council's acquisition of an additional site in the Merimbula area.*

The 2007 plan included minor amendments to the map indicating the land to which the plan applies by inclusion of additional land to the north and west.

#### **Bega Valley Section 94 and 94A Contributions Plan 2014**

*Bega Valley Section 94 and 94A Contributions Plan 2014* was adopted by Council on 4 February 2015 and took effect on 17 February 2015. All former contributions plans, including *Section 94 Contributions Plan No 2 – Carparking*, were repealed upon this plan taking effect. The 2014 plan enables Council to levy contributions on residential accommodation development across Bega Valley Shire that results in a net increase in dwellings on a site, development on land in the Woodlands Lane catchment and on land as mapped that generates the need for a laneway. Contributions are levied for open space and recreation, community facilities, roads, streetscapes, land acquisitions and plan administration.

Contributions are not levied for car parking through this plan under section 94. Contributions for car parking are now collected in lieu of on-site provision under the section 94A plan, i.e. as a percentage of the development cost, or by way of voluntary planning agreements between individual developers and Council. Section 2.22.2 of the current contributions plan enables Council to allocate levies collected under previous plans, including *Section 94 Contribution Plan No. 2 Carparking* which was repealed upon the current plan taking effect, towards a similar purpose in the locality in which levies were collected where similar works are available and identified in the works schedules. Where similar works are not included in the schedules *Council will allocate those funds to works of a similar nature in the general locality that are included in the works schedules.*

The works schedules of the *Section 94 and 94A Contributions Plans 2014* include a specific works item relating to the provision of public car parking in the CBD of Merimbula (Item R56). This is the future renewal of a car parking area shown on Works Location Maps as being the Palmer Car Park at an allocated cost of \$1,200,000 to be carried out after 2020. Section 2.19 of the plan allows for the pooling of monetary contributions paid for different purposes in accordance with the priorities identified in the Works Schedule.



## CONTRIBUTIONS AND THE PROVISION OF PUBLIC CAR PARKING IN MERIMBULA

Zenith Town Planning has been requested to respond to several questions put by Council in the project brief and to matters that have been raised in correspondence received by Council from land owners in Merimbula regarding Council's use of contributions and obligations regarding the provision of public car parking. Below is a broad response to each of these issues. Specific questions regarding the management of funds and the auditing of Council records are not addressed in this advice.

### Compliance of Council with legislation and policy regarding car parking and development contributions

Council's historic contributions plans have been sound and, based on the information available, contributions made under those plans appear to have been levied in accordance with legislation and policy.

A review of the current plan *Bega Valley Section 94 and 94A Contributions Plan 2014* against the provisions of the *EPA Act 1979*, the *EPA Regulation 2000* and the *Development Contributions Practice Notes* has determined that the plan complies with all aspects of legislation and policy. The plan contains all details that are specified in section 27 of the Regulation, including information about how contribution rates are calculated and the tiered fixed levies under section 7.12 (formerly section 94A). Interestingly, combining both section 7.11 (formerly section 94) and section 7.12 (formerly section 94A) plans into a single plan is unusual but is not inconsistent with provisions of the Act or Regulation.

The works schedules of the *Section 94 and 94A Contributions Plans 2014* includes Item R56 relating to the provision of public car parking in the CBD of Merimbula. This works item is a similar item in the locality in which levies were collected and Council is therefore able to transfer accumulated funds towards this item in accordance with section 2.22.2 of the plan.

The Honourable Justice Pepper found in *SJ Connelly CPP Pty Ltd v Byron Shire Council [2014]* that *It follows as a matter of logic that if a council can amend a plan to alter the nature and extent of public amenities and services required and then apply existing section 94 contributions to those amended amenities or services, it can also carry forward section 94 funds collected under a plan for which public services or amenities were proposed into any amended or substituted plan. Similarly, it follows that just as funds can be carried over, so too can works be transported from one contributions plan to another provided the relevant nexus between the works and the proposed development exists.*

Reference is made to the *RTA Guide to Traffic Generating Development in Bega Valley Development Control Plan 2013*. The reference is intended to provide guidance for car parking layout and design and the numbers of spaces required where a development type is not specified in the DCP. The guide explains section 7.11 (formerly section 94) and the ability for councils to levy contributions in lieu of on-site parking. However, the guide is not a statutory document and does not proscribe legal procedures regarding development contributions.

### Council's financial obligations regarding the provision of public car parking

It is acknowledged that contributions are sometimes insufficient to fund infrastructure and that other sources of funding, such as general rates, special rate levies, borrowings, grants and subsidies and user charges, can be used to reduce the risk of reliance on development contributions. There is evidence that Council has actually used funds from sources other than contributions to construct public car parking where land has been dedicated through subdivision or acquired through general revenue. This matter is addressed below with respect to the provision of car parking in Merimbula and the use of contributions.

However, there is no legal obligation for Council to contribute funds from other sources towards the provision of public car parking which is identified in a works schedule of a contributions plan under any circumstances, including due to the acceptance of the dedication of land, monetary contributions or works in kind.

Councils are encouraged but not obligated to utilise other funds such as general revenue or borrowings where the pace of development is slow and therefore the accumulation of contributions is protracted. Where alternative funds are used then councils are able to seek reimbursement of that expenditure by way of contributions collected after the public car parking has been provided.

### Council's discretion to the application of policy

Council may elect to waive car parking requirements that are required by an acceptable solution of a development control plan or any other code or policy. Car parking requirements are generally not contained in statutory planning schemes such as local environmental plans. Development control plans are a guide to assist development to satisfy the objectives of the *EPA Act 1979* and *Bega Valley LEP 2013* and are essentially Council policy. However, the issue of setting a precedent for discounting for other subsequent development proposals should be considered.

Similarly, Council may waive or discount development contributions. This should be justified for reasons of economic development or where other assistance to the provision of public amenities or facilities has been made by the proponent other than through contributions. In either case Council is not obligated by legislation to contribute funds from other sources to compensate for any exemption of levying contributions towards the provision of public car parking.

### The issue of the location of a public facility (spatial nexus)

Spatial nexus is not defined in legislation, policy or guide notes. There is no requirement either in legislation, regulations, practice notes or circulars to provide a public parking area in close proximity to a development for which a contribution has been made to Council. The only reference to the spatial provision of a public facility is section 7.11(1) (formerly section 94(1)) which states '*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 ...' (underlining added).

In *Parramatta City Council v Peterson* (1987) The Honourable Justice Stein, in testing the validity of conditions imposed to secure public benefits, rejected the argument that there had to be a direct spatial nexus between the public facility and the development. This case concerned a section 7.11 (formerly section 94) condition which required a monetary contribution towards a parking station located at some distance from the development site but still in the Parramatta town centre. He held that notwithstanding the distance between the development and the facility, because the parking station would serve the whole of the Parramatta CBD it therefore provided benefit to the development. This principle has been cited in several Land and Environment Court decisions since, including *Toadolla Co Pty Ltd v Dumaresq Shire Council* (1992), *GHD Pty Ltd v Pristine Waters Council* [2001], and *SJ Connelly CPP Pty Ltd v Byron Shire Council* [2014].

In summary, section 7.11 (formerly section 94) of the *EPA Act 1979* does not require a direct connection between the development and the public facility for which contributions were collected, nor does it require geographical proximity as long as the contribution fairly and reasonably relates to the subject development.

#### **The issue of a 'reasonable timeframe' to use contributions (temporal nexus)**

Section 7.3 (formerly section 93E) of the *EPA Act 1979* requires Council to apply contributions towards the purpose for which they were collected within a reasonable time. What is 'reasonable time' is not defined in the Act or Regulation in relation to the provision of a service or facility to be provided using development contributions. It is often difficult for councils to collect funds and then to provide services and facilities in a timely manner in areas of slow growth such as non-metropolitan local government areas.

In *GHD Pty Ltd v Pristine Waters Council* [2001] NSWLEC 186 the Honourable Justice McEwen noted that '*what is a reasonable time for the application of contribution monies collected under s 94 for this council at Corindi Beach may be starkly different from what would be a reasonable time for a Sydney metropolitan council*'.

In summary, slow growth and the consequent slow collection of funds mean that it is not possible to define a reasonable timeframe. And what is reasonable timing differs between urban and rural/regional councils. It can be assumed that as long as the supply of spaces is meeting the demand for spaces that car parking is being provided within a reasonable timeframe.

#### **Council's moratorium in 2007 on the provision of on-site car parking in Merimbula**

It is assumed that the resolution of Council to deem that required car parking had been provided and to only require parking for new development was made to enable Council to move forward with a 'clean slate' in terms of the collection of contributions towards public car parking. This was possibly

due to the complexities of identifying properties where credits for car parking applied and determining the number of credits in those cases. It may also have been intended to resolve a situation where contributions had been inconsistently levied prior to 2007. Irrespective of the reasoning, this resolution was not inconsistent with provisions of either the *EPA Act 1979* or the *EPA Regulation 2000*. Research of findings of the Land and Environment Court has not revealed that the Court had a position on applying such a moratorium or similar.

This resolution has been carried forward into *Bega Valley DCP 2013*. Section 5.9.3.1 states that additional parking spaces will not be required for existing lawful commercial development at the rate of 1 space per 25m<sup>2</sup> for ground floor GFA and 1 space per 40m<sup>2</sup> upper floor GFA. It is also noted that Council will recognise the number of parking spaces previously paid as contributions.

### The number of parking spaces provided in Merimbula and the use of contributions

The total number of car parking spaces that have been required to be provided for approved commercial developments in the town centre of Merimbula where contributions have been made as either financial payments or the dedication of land is 516. Of these, 143 have been provided on site as part of the approved developments and there have been 121 parking space credits that relate to commercial properties.

Parking space credits accrue when, for instance, a development that has provided all required on-site parking space is changed to another commercial use for which car parking requirements are less than the original use. Credits also accrue where works in kind have been provided or another material public benefit that offsets the requirement to provide spaces on site, or where consent has been granted for a particular development that has not proceeded to construction but contributions have been paid.

This leaves a deficiency of 252 parking spaces for which Council has received contributions. Land has also been dedicated in lieu of contributions or on-site parking in 7 instances to be used as public car parking, laneways and open space. Table 1 below summarises parking space requirements, deficits, credits and where contributions and/or land dedication have been received by Council as a condition of consent for commercial development in the town centre of Merimbula.

**Table 1: Summary of car parking requirements for commercial development in Merimbula**

Spaces required for commercial developments	Spaces provided on site for these commercial developments	Car parking credits held for these sites	Gross deficiency in the provision of car parking
516	143	121	252

Public car parking areas have developed in Alice Street, Beach Street, Park Street/Palmer Lane and Cabarita Place. The provision of car parking in these designated parking areas in Merimbula offers a total of 374 spaces.

The location of public car parking and the numbers of spaces available in each is given in Table 2. On-street parking spaces may be included in the calculation to determine the total available parking space in the town centre, however, contributions are not put to on-street parking, only towards designated parking facilities. On-street parking is therefore excluded from Table 2.

**Table 2: Public car parking provision in Merimbula**

<b>Location of car parking area</b>	<b>Spaces provided</b>
Alice Street Car Park	109
Beach Street Car Park	49
Cabarita Place Car Park	40
Park Street/Palmer Lane	176
<b>Total</b>	<b>374</b>

Typically, car parking areas evolve historically in commercial centres to cater to demand for parking space. Information supplied by Council confirms that land that has been developed for public car parking has been provided through the subdivision of land and general fund purchases as follows:

- Land now occupied by the Palmer Lane car park was dedicated in the 1970s as part of a residential subdivision,
- Land now occupied by the Alice Street car park was purchased by Council in 1981,
- Land now occupied by the Park Street car park was formerly a residential unit development site and was purchased by Council, and
- Additional land was purchased in the mid-1980s and added to the Palmer Lane car park.

These car parking areas, the Alice Street, Park Street and Palmer Lane car parks, have been constructed by Council following the acquisition of land using sources of funds other than contributions. The 285 spaces provided within these car parks can be deducted from the gross deficiency shown in Table 1 to give a net deficiency in the provision of car parking. The result is a surplus of 33 spaces after taking these 285 spaces into account.

**Table 3: Public car parking provision in Merimbula taking into account Council construction of public car parks**

<b>Gross deficiency in the provision of car parking</b>	<b>Less car parking spaces in Alice Street, Park Street and Palmer Lane developed by Council</b>	<b>Net deficiency (surplus) in the provision of car parking</b>
252	285	-33

The 2016/17 financial statements of Council indicate that Council holds car parking contributions to the value of \$659,000 as a restricted asset, that is, in trust as contributions to be put towards public car parking across Bega Valley Shire. This includes contributions collected under previous plans that were repealed when *Section 94 and 94A Contributions Plan 2014* took effect. Of this an accumulated amount of \$385,187 is held in a trust account to put towards car parking in Merimbula. Council is legally entitled to carry forward monetary contributions held in trust that have been collected under former contributions plans and to put those monies towards public car parking in accordance with a current contributions plan. The Works Schedule to the current contributions plans indicates that Council has committed to spend \$1.2 million on renewal works in a car parking area in Merimbula. Accumulated contributions may be used to carry out these works in addition to proceeds from the sale of land that has been dedicated to Council in lieu of monetary contributions, such as in Main Street, Merimbula.

Given the volume of spaces now available, the number of spaces for which contributions have been collected since the 1970s and acknowledging that some property files cannot be located, it appears that Council has genuinely attempted to meet obligations and provide adequate car parking to cater to the commercial centre of Merimbula. Council holds contributions in trust and is committed to carrying out car parking renewal works after 2020 using those funds and other sources. It is concluded that Council has acted responsibly and has acted to meet its obligations within a reasonable timeframe and to maintain accurate accounting records in recent years.

The Honourable Justice Lloyd found in *Cowra Shire Council v The Minister for Urban Affairs and Planning & Anor [No.2] [2001]* that *Section 94(2) does not require a precise calculation between the demand generated and the contribution required. To do so would impose an unrealistic requirement on planning authorities and developers to predict the precise needs generated by each development, including very small developments. Instead it provides for the creation of contributions plans by councils, which identify the particular public amenities and public services upon which demand is placed, the cost thereof and which generally standardise the contributions applicable to certain categories of development. By providing for the formulation of contributions plans, it could be said that the EP&A Act prefers consistency and predictability to precision in this respect.*

## RECOMMENDATIONS

Council's *2017-2021 Delivery Program* contains a section on town centre car parks with actions to review Council's transport asset management plan and to deliver the works programs for car park upgrades and renewal. To resolve concerns amongst the retail community of Merimbula concerning the availability of public car parking it is recommended that in the next review of the *Community Strategic Plan* Council resolve to prepare a car parking strategy for the town centre of Merimbula that identifies parking requirements going forward taking into account expected growth and the nature and location of commercial development. This would provide an opportunity for land holders to participate in the process of determining the location, standard and size of public car parking areas throughout the town to best serve the needs of all commercial premises. The strategy could cause

an amendment to the works schedule of the current contributions plan and Council's Delivery Program for public services and facilities.

On occasions Council has waived the payment of contributions to encourage commercial development. There have also been instances where car parking spaces have been required to be provided but have not been physically constructed. Acknowledging that the circumstances surrounding cases where Council waives contributions or ceases to require the provision of parking are complex, it is also recommended that Council continues to be diligent regarding the application of development contributions and the maintenance of a contributions register. Contributions should only be discounted or waived where there is sufficient proven public benefit. To maintain a level playing field, Council should consider any land, money or other material public benefit that a proponent of a development has dedicated or provided free of cost within the area or any adjoining area before granting an exemption to the payment of development contributions.

If you would like to discuss this advice please contact me on 0408 258 877 or by email at [zenithplan@bigpond.com](mailto:zenithplan@bigpond.com).

Yours faithfully,



Allen Grimwood

