

# Contributions Plan No.6 EXTRACTIVE INDUSTRIES

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**20 March 2023**

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## PART A: Works schedule and contribution rate

### 1.1 Section 7.11 five (5) year works program 2022/23 – 2026/27

The Section 7.11 five (5) year works program for 2022/23 – 2026/27 for Contributions Plan No.6 – Extractive Industries is provided below. All Contributions collected under this Plan, except for \$10,000 per annum allocated for independent auditing purposes, will be transferred to TfNSW for expenditure in accordance with the parameters set by the Land & Environment Court judgement Collin C Donges & Associates Pty Ltd v BHSC in 1989. TfNSW may undertake works additional to those identified within the Works Program, as deemed necessary by TfNSW and in accordance with the parameters set by the Land & Environment Court judgement Collin C Donges & Associates Pty Ltd v BHSC in 1989. Notwithstanding the value of works completed by TfNSW, the value of funds to be transferred to TfNSW by Council shall not exceed the value of funds collected under this Plan.

#### Section 7.11 five (5) year works program:

Year	Item	Road	Approximate Location	Length or Area	Description	Total Cost	Section 7.11 Contribution	RMS Contribution
2022/23	1	Old Northern Rd	Middle Dural near Edwards Road	680m	Drainage improvement	\$272,000	\$136,000	\$136,000
	2	Old Northern Rd	Middle Dural between Garemyn Road and Freemans Lane	720m	Drainage improvement	\$288,000	\$144,000	\$144,000
	3	Old Northern Rd	Maroota about 400 metres north of Wisemans Ferry Road	170m	Drainage improvement	\$68,000	\$34,000	\$34,000
	4	Wisemans Ferry Rd	South Maroota near Patricia Fay Drive	270m	Drainage improvement	\$108,000	\$54,000	\$54,000
2023/24	5	Old Northern Rd	Between no. 610 and no.991 of Old Northern Rd, Dural	1400m	Drainage improvement investigation	\$300,000	\$150,000	\$150,000
	6	Old Northern Rd	Between no. 1781 and no. 2684 of Old Northern Rd, Glenorie	650m	Drainage improvement investigation	\$200,000	\$100,000	\$100,000
2024/25	7	Old Northern Road	Dural near Wyoming Road	200m	Design and delivery of intersection upgrade with provision of Basic Right (BAR) Turn treatment.	\$2,287,500	\$1,143,750	\$1,143,750
	8	Old Northern Road	Middle Dural near Cranstons Road	200m	Design and delivery of intersection upgrade with provision of Basic Right (BAR) Turn treatment.	\$2,287,500	\$1,143,750	\$1,143,750
	9	Old Northern Road	Glenorie near Bangor Road (south)	200m	Design and delivery of intersection upgrade with provision of Basic Right (BAR) Turn treatment.	\$2,287,500	\$1,143,750	\$1,143,750
	10	Wisemans Ferry Road	Cattai near Halcrows Road	200m	Design and delivery of intersection upgrade with provision of Basic Right (BAR) Turn treatment.	\$2,702,628	\$1,351,314	\$1,351,314
	11	Wisemans Ferry Road	Maroota near Kearney Road	200m	Design and delivery of intersection upgrade with provision of Basic Right (BAR) Turn treatment.	\$2,838,240	\$1,419,120	\$1,419,120
2025/26	12	Old Northern Rd, Dural	Dural near Wyoming Road	6,600m <sup>2</sup>	Mill and fill with isolated patches	\$350,000	\$175,000	\$175,000
	13	Old Northern Rd	Dural near Dural Downs Way	1,500m <sup>2</sup>	Mill and fill with isolated patches	\$100,000	\$50,000	\$50,000
Total						\$14,089,368	\$7,044,684	\$7,044,684

#### Notes:

- The items listed in the works program are subject to obtaining funding approval from TfNSW.
- The items listed in the works program are subject to obtaining TfNSW approvals and may include relevant environmental approvals and property acquisition.
- The cost of work for the items listed in the works program is based on high-level estimates and is subject to change.
- Progression of Items proposed in Year 3 is subject to funding under the future Safer Roads Program.



## **1.2 Map of works items in Section 7.11 five (5) year works program 2022/23 – 2026/27**

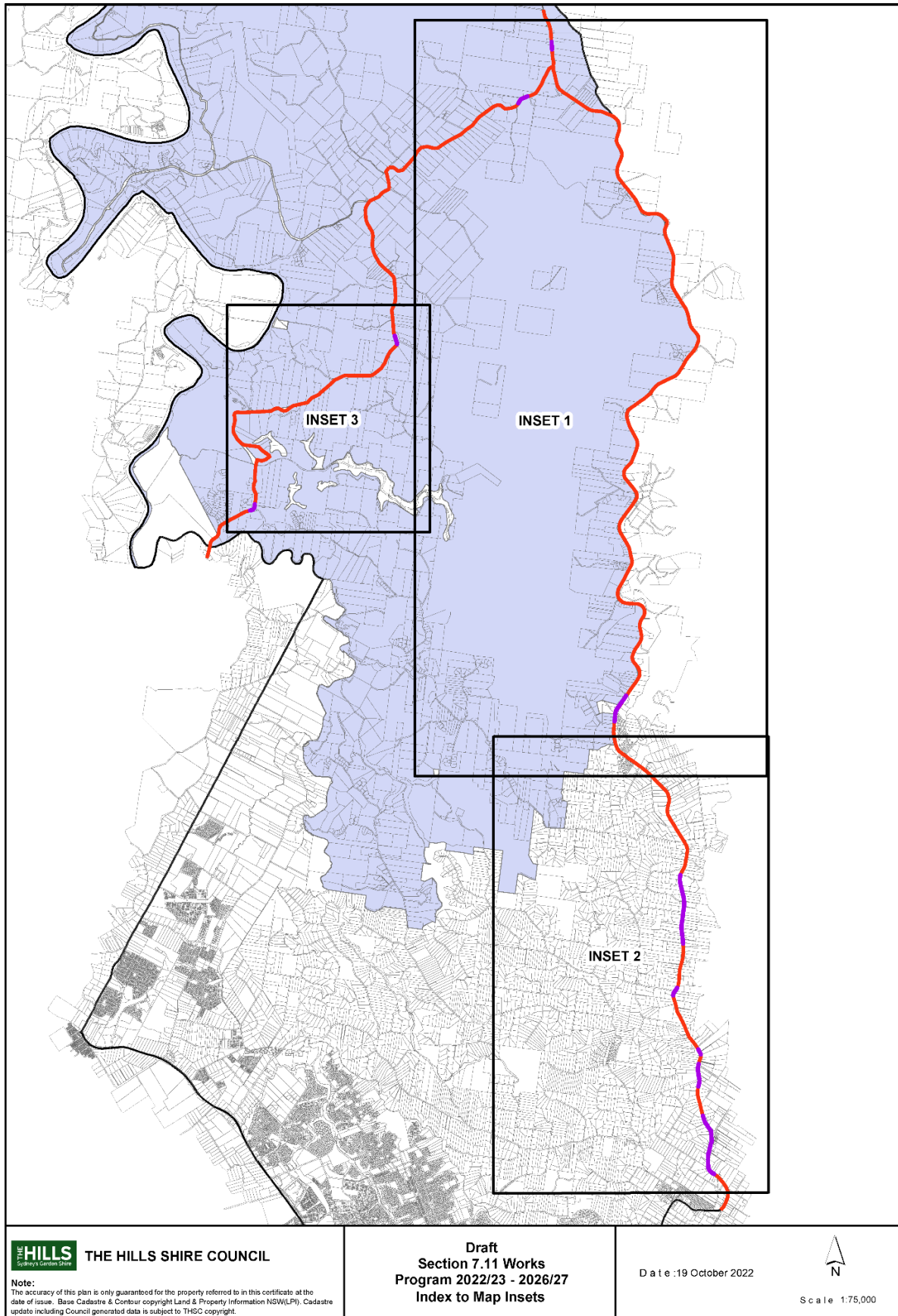
The locations of the works items contained in the Section 7.11 five (5) year works program for 2022/23 – 2026/27 are provided in Figures 1 and 2.

## **1.3 Contribution rate**

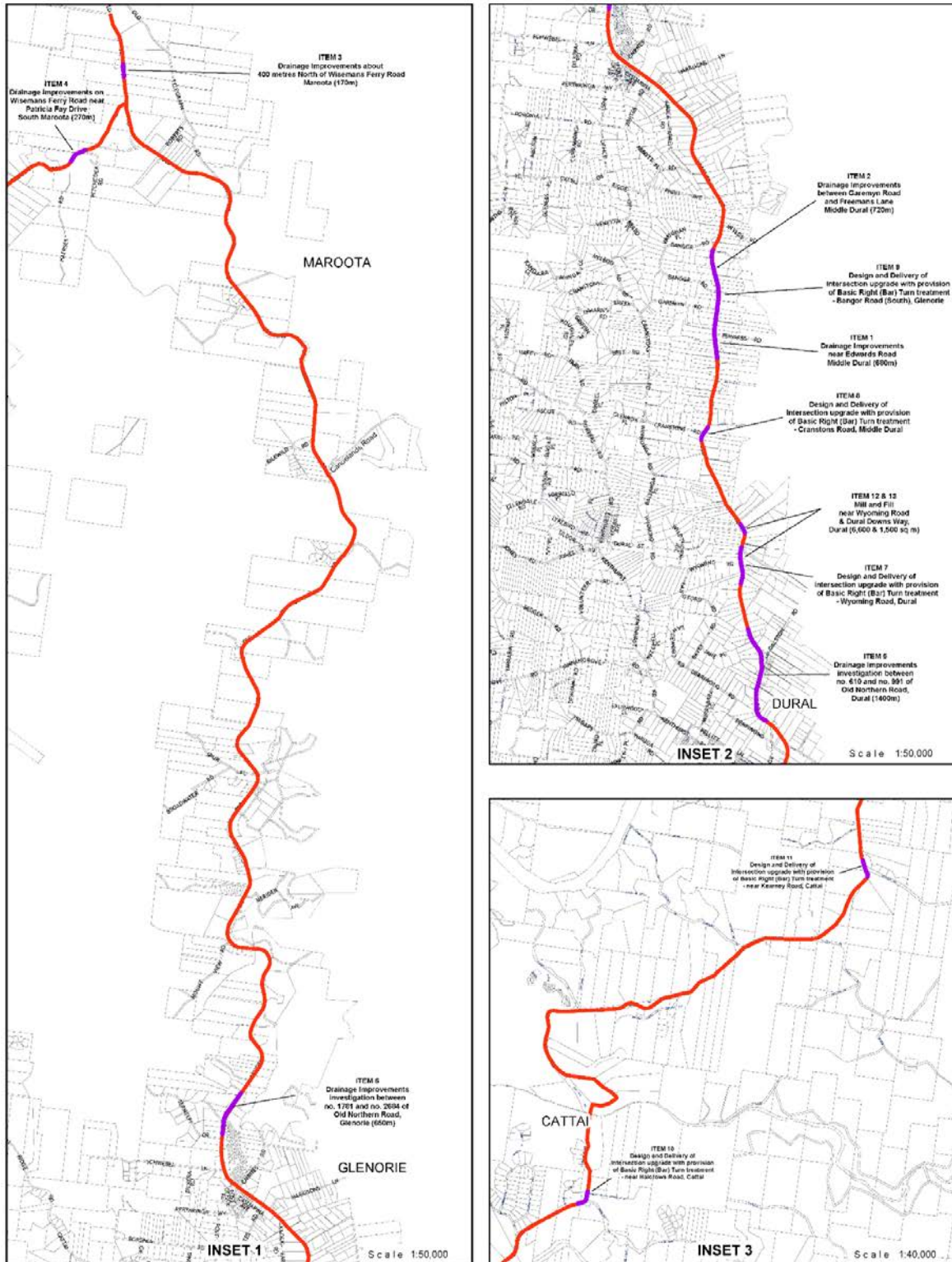
The contribution rate applying to Contributions Plan No.6 – Extractive Industries is \$1.10 per tonne of extractive or processed material transported from a site by vehicle. This rate is valid for the financial year ending 30 June 2023.

The contribution rate will be indexed and adjusted annually, in accordance with the Sydney Consumer Price Index (CPI) applicable to each year ending 30 June. Council's Contributions Rates Schedule provides the latest contribution rate and is available at Council's administration centre or on Council's website: [www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au). Further discussion in relation to how the contribution rates will be indexed is provided in Section 2.14.

**FIGURE 1:INDEX TO MAPS INSETS FOR LOCATION OF WORKS ITEMS**



**FIGURE 2: LOCATION OF WORKS ITEMS IN THE SECTION 7.11  
5 YEAR WORKS PROGRAM 2022/23 – 2026/27**



THE HILLS SHIRE COUNCIL

**Note:**  
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**Draft  
Section 7.11 Works  
Program 2022/23 - 2026/27**

Date: 19 October 2022



## **PART B: Administration and operation of the plan**

### **2.1 Basic principles of developer contributions**

Under Section 7.11 of the *Environmental Planning and Assessment Act, 1979* ("EP&A Act") Council has the power to levy contributions from developers for public amenities and services required because of development.

The three general principles in applying Section 7.11 contributions are:

1. A contribution must be for, or relate to, a planning purpose;
2. A contribution must fairly and reasonably relate to the subject development; and
3. The contribution must be such that a reasonable planning authority, duly appreciating its statutory duties, could have properly imposed.

Under the provisions of the EP&A Act Council may either:

- Require land to be dedicated free of cost;
- Require money to be contributed for works or facilities to be provided in the future;
- Require money to be contributed towards the cost of works in kind, in satisfaction of Section 7.11 requirements; or
- Require or accept a combination of any of the above.

The ability to levy extractive industries for the cost of maintenance, repair and reconstruction of roads as a result of damage caused by trucks involved in the industry is of considerable importance to the Hills Shire Community.

The "*user pays*" approach can significantly reduce the public financial burden of road improvements and the damage caused to the roads.

One of the fundamental responsibilities of any Council in imposing Section 7.11 contributions is to ensure that the contributions levied are reasonable. That is, the works and facilities to be provided must be a direct consequence of the development on which the contributions are levied. They must not unnecessarily inflate development costs.

In keeping with this responsibility, Section 7.11 contributions levied on development within the Shire are limited to essential or base-line works.

### **2.2 What is the name of this plan?**

This Plan is called *Contributions Plan No.6 – Extractive Industries*.

### **2.3 Area to which this contribution plan applies**

This Contributions Plan applies to land within the local government area of The Hills Shire Council and shaded grey within Figure No.3.

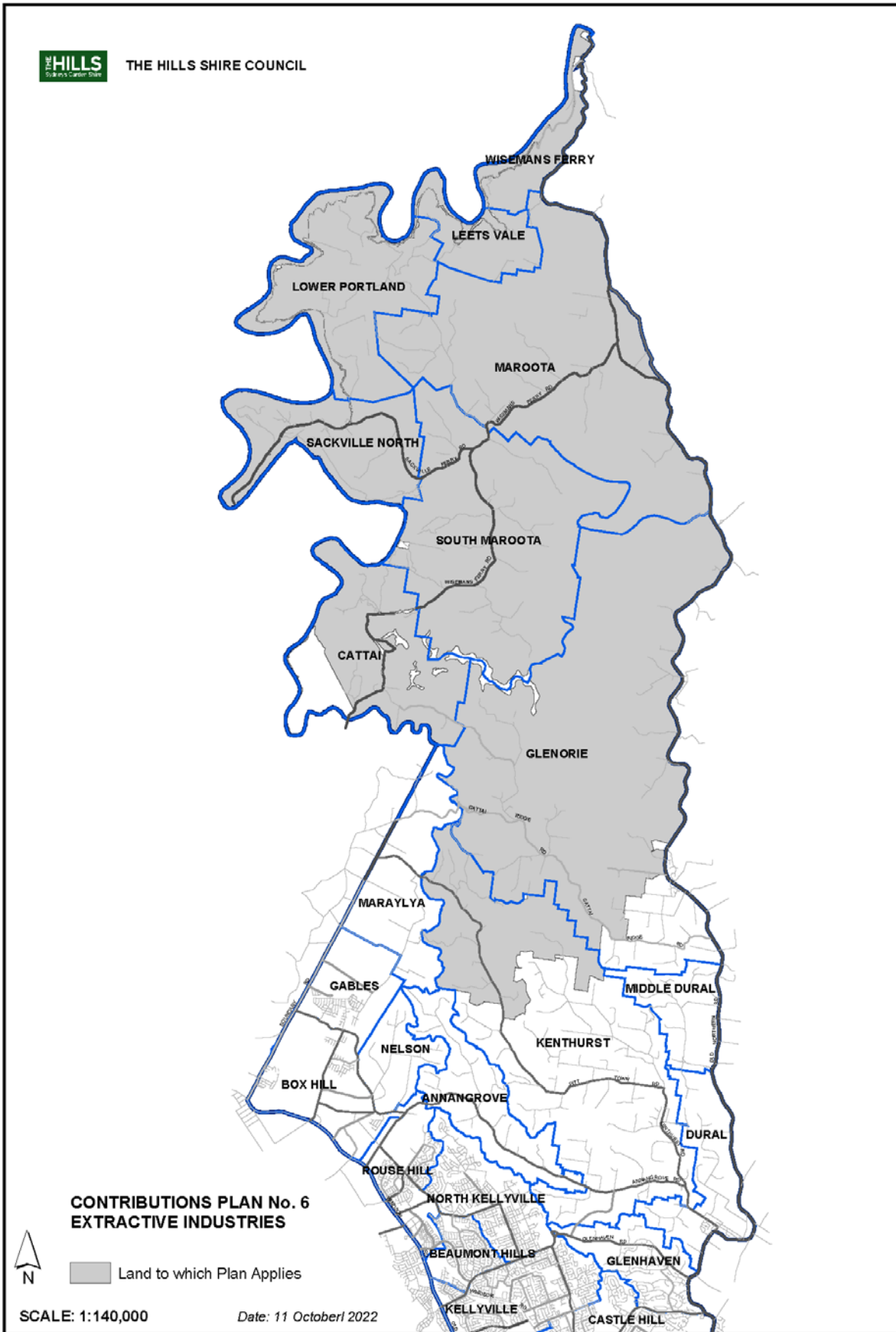


## **2.4 What is the purpose of this development Contributions Plan?**

The purpose of this Contributions Plan is to:

- a) Provide an administrative framework under which specific public facilities and strategies may be implemented and coordinated;
- b) Assess the demand for road maintenance, repair and reconstruction arising from extractive industry development;
- c) Justify the application of a levy for roadworks for each tonne of extracted/processed material;
- d) Outline Council's policy and procedures for the collection, holding and expenditure of funds for the extractive industry roadworks;
- e) Program for the provision of roadworks needed as a result of extractive industry development;
- f) Provide a basis for determining fair and reasonable developer contributions;
- g) Outline the location and estimated costs of services provided; and
- h) Facilitate proper financial management and accountability for the assessment of contribution requirements and the expenditure of contributions received.

**FIGURE 3: LAND TO WHICH CONTRIBUTIONS PLAN NO.6 APPLIES**



## **2.5 Application of this Contributions Plan**

This Contributions Plan represents Council's policy and administrative procedures in respect of developer contributions for extractive industries.

A Contributions Plan becomes part of the development control process under the EP&A Act 1979 by virtue of Sections 4.17 and 7.11. The provisions of this plan are one of a number of considerations that are relevant when Council determines a development application in accordance with Section 4.16 of the Act.

## **2.6 Commencement of the plan**

This Contributions Plan has been made under the provisions of Section 7.11 of the EP&A Act and Part 9 of the Environmental Planning and Assessment Regulation, 2021 ("EP&A Regulation"). As required under clause 211 of the Regulation this plan has been prepared having regard to the Developer Contributions Practice Notes issued by the Department of Infrastructure Planning & Natural Resources (now the Department of Planning and Environment) in July 2005.

This plan takes effect from the date on which a public notice was published, pursuant to clause 214(4) of the EP&A Regulation.

Contributions Plan No.6 – Extractive Industries, was adopted by Council on 29 June 1993, Minute No.662 and came into force on 7 July 1993.

Amendment No.1 of Contributions Plan No.6 – Extractive Industries, was adopted by Council on 7 December 1999, Minute No.1426 and came into force on 14 December 1999.

Amendment No.2 of Contributions Plan No.6 – Extractive Industries, was adopted by Council on 20 May 2003, Minute No.103 and came into force on 27 May 2003.

Amendment No.3 of Contributions Plan No.6 – Extractive Industries, was adopted by Council on 24 March 2009, and came into force on 7 April 2009.

Amendment No.4 of Contributions Plan No.6 – Extractive Industries, was adopted by Council on 11 February 2014, and came into force on 4 March 2014.

Amendment No.5 of Contributions Plan No.6 – Extractive Industries, was adopted by Council on 23 October 2018, Minute No. 627 and came into force on 6 November 2018.

This Plan (Amendment No.6 of Contributions Plan No.6 – Extractive Industries), was adopted by Council on 14 March 2023, Minute No. 75 and came into force on 20 March 2023.

## **2.7 Relationship with other plans and policies**

This Contributions Plan supplements the provisions of The Hills Local Environmental Plan. To enable a greater understanding of this Contributions Plan, the following documentation can be read:

- The Hills Local Environmental Plan

- Relevant sections from The Hills Development Control Plan

The above documents can be viewed or purchased on Council's website: [www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au).

A list of references consulted in the preparation of this Plan is provided in Part D.

To assist the interpretation of the Plan, definitions relevant to the Contributions Plan have been included in Appendix C.

## **2.8 Method and timing of the payment of Contributions**

Council will accept developer contributions payments by way of a monetary contribution.

### Timing of payment

The Section 7.11 contribution is calculated from true certified copies of weighbridge dockets, logbooks, diary entries and/or other returns or records that show the true quantities of extracted and/or processed material transported from an extraction site.

The applicant/extractor or consenting assignee is to supply to Council on or before the fourteenth day of each month for the duration of the development consent for the extraction operations, the records of the transported material.

Council, upon receipt of such records will, as soon as it can conveniently do so, issue to the applicant (or assignee) an invoice for the Section 7.11 contribution amount to be paid to Council within fourteen days of the date of invoice.

### Audit of records

Council has by condition of consent the right to inspect the original records relating to the transport and export of extracted or processed material from an extraction site.

Original records that may be requested for inspection include:

- a) The extraction site/zone from which material was extracted and/or processed;
- b) Date and time of export/transport of material from an extraction site;
- c) Monthly quantity & nature of material transported/exported;
- d) Daily number & type (including registration number) of laden trucks and/or trailers;
- e) Monthly payment date & amount of Section 7.11 contributions made to Council;
- f) Sales documentation including invoices, profit and loss information to allow the reconciliation of revenue received/receivable to material extracted.

All extractive industry operators will be expected to keep all necessary information to verify the above matters. Council's inspection of original records will be requested by way of prior written notice.

To ensure transparency and accountability, Council will appoint suitably qualified and independent auditors to examine, appraise and report on the manner in which operators of extractive industries within the Shire are making contributions.



To achieve this, a regular funds management component shall allow the expenditure of up to \$10,000 per annum from existing Section 7.11 funds for the independent auditing of income of extractive industry operations.

## **2.9 Deferred/periodic payments**

The Council may accept a written request for a deferred or periodic payment of a contribution if the applicant or any other person entitled to act upon the relevant consent satisfies the Council that:

- compliance with the provisions relating to when contributions are payable is unreasonable or unnecessary in the circumstances of the case;
- deferred or periodic payment will not prejudice the timing or the manner of the provision of the public amenity or service for which the contribution was required, as outlined in Works Schedule (see Part A of this Plan);
- there will be no prejudice to the community deriving benefit from the public amenity of service of facility required by the proposed development; and
- there will be no prejudice to the operation of this Plan.

The decision to accept a deferred or periodic payment is at the sole discretion of the Council.

The Council may accept deferred or periodic settlements by way of instalments subject to the condition that the instalments are to be paid before work commences on any stage of the development, or as otherwise agreed to by the Council.

The Council may, if it decides to accept the deferred or periodic payments of a contribution, require the applicant to provide a bank guarantee by an Australian bank for the amount of the contribution, or the outstanding balance, plus any interest likely to accrue, on condition that:

- a. the bank guarantee requires the bank to pay the guaranteed amount unconditionally to the consent authority where it so demands in writing not earlier than 6 months (or other term so determined by the Council) from the provision of the guarantee or completion of the development or stage of the development to which the contribution, or the outstanding balance, relates.
- b. The guarantee prohibits the bank from:
  - i) having recourse to the applicant or other person entitled to act upon the consent; and
  - ii) having regard to any appeal, dispute, controversy, issue or other matter relating to the consent or the carrying out of development in accordance with the consent, before paying the guaranteed amount.
- c. the bank's obligations under the guarantee are discharged:
  - i) when payment is made to the consent authority in accordance with the terms of the bank guarantee; or
  - ii) if the related consent lapses; or
  - iii) if the consent authority otherwise notifies the bank in writing that the bank guarantee is no longer required.

- d. the applicant pays interest to the Council on the contribution, or the outstanding balance at the overdraft rate on and from the date when the contribution would have been otherwise payable, as set out in this Contribution Plan.

Where the Council does not require the applicant to provide a bank guarantee, it may require a public positive covenant under Section 88E of the *Conveyancing Act 1919* to be registered on the title to the land to which the relevant application relates.

## **2.10 Savings and transitional arrangements**

A development application which has been submitted prior to the adoption of this Plan but not determined shall be determined in accordance with the provisions of this Plan.

## **2.11 Pooling of contributions**

This Plan authorises monetary developer contributions paid for different purposes to be pooled and applied (progressively or otherwise) for those purposes. The priorities for the expenditure of the levies are shown in the works schedule.

## **2.12 Exemptions**

As stated in Section 2.5 (Application of this Contributions Plan), this Contributions Plan applies to all extractive industries development. The only exemptions allowed are those the subject of a direction from the Minister for Planning under Section 7.17 of the EP&A Act.

## **2.13 Calculation of developer contributions**

A Section 7.11 contribution payment by monetary contribution is required for all extracted or processed material transported from a site by vehicle. The amount to be paid is determined by the following formulae:

$$\text{Contribution} = T \times R$$

T = tonne of extracted/processed material transported from a site by vehicle

R = Contribution rate per tonne, adjusted annually with CPI - Sydney

## **2.14 Review of contribution rate**

The contribution rate will be indexed and adjusted annually, in accordance with the Sydney Consumer Price Index (CPI) applicable to each year ending 30 June. The CPI is published by the Australian Bureau of Statistics (ABS). Please refer to the ABS website: [www.abs.gov.au](http://www.abs.gov.au) for information regarding the CPI. The contribution rate will be adjusted from and including July each year in accordance with the CPI for the Sydney region.

The adjusted contribution rate calculated as a result of review is published in Council's Contributions Rates Schedule available on Council's website: [www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au).

The amount of developer contributions stated in a consent are calculated on the basis of the contribution rate applying at the time of the issuing of development consent.

Appendix B provides an example of a standard Section 7.11 condition for extractive industries. This condition details Council's requirements for the payment of contributions.

## **2.15 Review and monitoring of this Contributions Plan**

This plan will be subject to regular review by Council. The purpose of such review is to ensure that:

- (a) The contribution rate is adjusted with CPI;
- (b) Contribution income reflects the current level of extraction activity; and
- (c) A works program is determined based on the level and location of extractive industry operations.

Contribution rates will be adjusted annually as described in Section 2.14 – Review of contribution rates.

Any change to the plan, apart from annual adjustments of the contribution rate are required to be placed on public exhibition under the Environmental Planning & Assessment Act.

## **2.16 Priority of provision of facilities**

The priority of the provision of roadworks is derived from the *Old Northern Road Strategic Route Study*, prepared by GHD Consultants for the Roads & Traffic Authority, August 1999. The priority of facilities is indicated in the works schedule table in Part A and Appendix A of this Plan.

The delivery of the roadworks outlined in the works program in Part A of this Plan is dependent on the rate in which developer contributions are collected from extractive industry operators. A change in the rate and/or quantity of extractive industry material haulage generated by operators will impact on the amount of contributions collected to fund the Section 7.11 five (5) year works program 2022/23 – 2026/27.

## **2.17 Financial information**

A separate accounting record for this Contributions Plan is maintained by Council. It contains details concerning contributions received and expended, including any interest earned on contribution income.

This record will be held by Council's Corporate and Financial Services Division. Council will also prepare an Annual Statement for this plan as soon as practical after the end of each year.

This statement will include:

- (a) The opening and closing balance of money held by Council;
- (b) The total amounts received by monetary contribution;
- (c) The total amounts spent in accordance with this Plan; and
- (d) The outstanding obligations of Council to provide works for which contributions have been received.

A Contributions Register may be inspected on request and will be maintained by Council in accordance with the Environmental Planning & Assessment Act.

1. Details of each consent for which a Section 7.11 condition has been imposed;
2. The amount of contribution required by the condition;
3. The name of the Contribution Plan the condition was imposed under; and
4. The date any contribution was received and the amount of such.

## **2.18 Planning agreements**

In accordance with Section 7.4(1) of the EP&A Act a planning agreement is a voluntary agreement or arrangement between a planning authority and a developer under which the developer agrees to make contributions towards a public purpose. A planning agreement may wholly or partly exclude the application of Section 7.11 to the development that is subject of the agreement.

The provisions of Sections 7.4 to 7.10 of the EP&A Act and accompanying Regulation prescribe the contents, form, subject matter and procedures for making planning agreements.

Any person seeking to enter into a planning agreement should in the first instance submit a proposal in writing to Council, documenting the planning benefits and how the proposal would address the demands created by development for new public infrastructure, amenities and services.



## PART C – Strategy Plans

### EXTRACTIVE INDUSTRY DEVELOPMENT AND THE ROAD NETWORK NEXUS

#### 3.1 Development and road network needs

Council is only able to levy Section 7.11 developer contributions where development will require the provision of, or increase the demand for, public amenities and services.

Accordingly, it is necessary to establish the nexus between extractive industries and the need for public amenities and services arising from that development.

To justify the roadworks proposed by this Plan, the development potential of extractive industries needs to be examined.

#### 3.2 Extractive potential

Extractive industries are permissible with Council's prior development consent. The Environmental Planning & Assessment Act defines extractive industries as designated development usually requiring an Environmental Impact Statement.

Gazetted on 17 October 1986, Sydney Regional Environmental Plan (REP) No.9 – Extractive Industries (now repealed) identified Maroota as a significant resource in the supply of sand to the Sydney metropolitan region.

In 1989, Council adopted the Plan of Management – Extractive Industries, Baulkham Hills Shire, that identified extractive resources like sandstone, flagging/dimension stone, gravel, clay, loam and soil throughout the Shire.

In 1991, Council adopted the Plan of Management – Extractive Industries at Maroota that estimated a resource of more than 80 million tonnes. When compared to other deposits like Somersby or Newnes, Maroota has the following benefits:

- (a) *It is composite resource that can provide a wide range of specialised construction materials from a confined area, thereby reducing the extent of environmental disturbance.*
- (b) *It is the largest source of high quality white mortar sand in close proximity to Sydney.*
- (c) *A significant large resource, of sufficient size to support extractive operations, occurs in the area principally on freehold land.*
- (d) *It is the closest of the plateau deposits to the growing Sydney region, particularly the western and northern Sydney areas.*

In 1995, the Department of Mineral Resources (now the Department of Primary Industries) issued a briefing paper titled The Supply of Construction Sand to the Sydney Market. The paper revealed the following:

- The Sydney region uses about 6 million tonnes of construction sand annually, valued at around \$100million;

- Sydney's existing resources are either rapidly depleting and/or diminishing in quality and range, necessitating supplies from outside the region;
- There are only a few viable alternative deposits capable of supplying Sydney's resource need over the next 5 to 20 years.

The Department of Primary Industries has since advised that Maroota is the third largest sand deposit and the third largest supplier of construction sand to the Sydney market.

State Environmental Planning Policy (Resources and Energy) 2021, which replaced Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995), prescribes special provisions for development at Maroota, including the need for controlled limited access points to the arterial road network.

### **3.3 Demand for roadworks**

A key issue of the 1989 Plan of Management was the "*adequacy of roads and the effects of truck haulage*". The position paper titled Construction Sand Resources of the Sydney Region states, "*the constraint on future development includes:*

*Road transport: Poor road to the deposit is one of the major constraints to the future development of the deposit. The Old Northern Road is unsuitable for large volumes of heavy traffic and already requires major upgrading."*

The 1995 briefing paper The Supply of Construction Sand to the Sydney Market, in relation to Maroota states:

*"However, factors which mitigate against a greater future role for Maroota include its location ..... and transport (Old Northern Road is not of a standard suitable for constant heavy traffic volumes)."*

In 1995, the Land & Environment Court examined, in part, the state and capacity of Old Northern Road at Maroota. In judgement, Chief Justice Pearlman states:

*"The evidence establishes that truck traffic from the Maroota sand operations has an impact upon the Maroota school and village, and upon the pavement of Old Northern Road."* (p.27, Proceedings No.10521 of 1994).

In 1998, the Land & Environment Court approved the extraction of up to 26 million tonnes over 30 years from lands surrounding the Maroota Trigonometrical Reserve.

Accordingly, this Plan seeks to impose Section 7.11 contributions upon a growing extractive industry sector that will continue to generate demand for road maintenance, repair and reconstruction, particularly given the following factors:

1. The growing significance of extractive industries in the Sydney region;
2. Increasing demand from Sydney markets resulting in more extractive industry vehicles;
3. Increased pressure from the above points 1 and 2 on the condition of roads within the Shire.

### 3.4 Justification for levy

Council initiated the principle of Section 7.11 contributions for extractive industries with the adoption of the 1989 Plan of Management. This plan gave justification for levying extractive industries for the maintenance and repair of roads.

In particular, it was found that damage to road pavements can be attributable to the number of movements of heavy vehicles hauling extractive material/resources on an existing road system that is unable to carry their additional loads in the short term.

The principle of seeking a payment of contributions for road pavement damage is well documented by case law. The landmark case of Collin C Donges & Associates Pty Limited v Baulkham Hills Shire Council established guidelines for levying extractive industries for road maintenance and repair. Specifically, Justice Stein held that:

- "1. A Council had the power to impose conditions under S. 94 of the Act requiring monetary contributions towards the cost of maintenance, repair and reconstruction of classified main roads under the State Roads Act, 1986.*
- 2. The mechanical transfer of responsibility of the two sections of road which occurred in 1984 did not alter the shared responsibility as between the Department and the Respondent which shared responsibility continued in law thereafter.*
- 3. The trust created by S. 94 was sufficient protection for the developer paying the subject monetary contributions.*
- 4. The term 'area' in S.94 of the Act means the Council's local government area and accordingly a contribution thereunder could not include money for work on the other half on Old Northern Road which was vested in the Hornsby Shire Council as owner.*
- 5. An 'incremental' rather than an 'average' approach in respect of quantifying the contributions was preferable because it was more likely to lead to levies that were 'reasonable' in terms of S.94(2) of the Act.*
- 6. In the circumstances of the subject development applications it was more equitable to levy a contribution by an amount per tonne of material hauled along two sections of road rather than to attempt to translate or transpose the road costs into a contribution of actual dollars and cents per annum during the life of development consents."*

In accordance with this judgement, Council now requires a contribution for the cost of maintenance, repair and reconstruction of roads.

### 3.5 Calculation of contribution rate

In 1989 the Court set the contribution rate of \$0.50 per tonne for extracted or processed material. This rate has been adjusted annually in line with the Sydney Consumer Price Index (CPI).

## WORKS PROGRAM

### 3.6 General

In 1989 the Land and Environment Court established that *"it is within the power of Council to levy a Section 94 contribution and further that it is 'reasonable' to levy a contribution for the main roads."*

The 1989 Plan of Management recommended road improvements and upgrading as a result of damage caused by heavy vehicles generated from extractive industries. When adopting the Plan of Management Council also resolved to approach Transport for NSW (TfNSW) (formerly Roads and Traffic Authority then Roads and Maritime Services) for a works program with a matching contribution for road improvements.

The 1991 Plan of Management – Maroota reinforced the need for upgrade and improvement works, including the following:

- Pavement repair and rehabilitation
- Localised pavement widening to 3.5m lane widths
- Shoulder upgrading and sealing
- Intersection improvements
- Overtaking opportunities
- Road delineation

### 3.7 Program in conjunction with Transport for NSW

To date, Council has expended a total of nearly \$17 million in Section 7.11 developer contributions for roadworks levied by Contributions Plan No.6.

Roadworks levied under Contributions Plan No.6 must occur within the area defined by the Land & Environment Court judgement for case of Collin C Donges & Associates Pty Ltd v BHSC in 1989. The judgement states in part that:

*(v) The Council will pay all of the said contribution payments into a specially identified trust account for payment towards the rehabilitation, restoration, repair and/or maintenance of Old Northern Road, between New Line Road and the Crown road immediately adjacent to the northern boundary of Portion 117, and Wisemans Ferry Road, between its intersection with Old Northern Road and the Baulkham Hills Shire boundary at Cattai Creek.*

Council has an agreement with TfNSW for the funding and programming of roadworks along Old Northern Road and Wisemans Ferry Roads, including the expenditure of Section 7.11 contributions collected from extractive industries. The principle of the agreement is that TfNSW is to provide funding for roadworks that will match the amount of Section 7.11 funding provided by Council through Contributions Plan No.6. Because Council's Section 7.11 contribution may only be expended on works situated within the area defined by the above Court judgement, TfNSW funding must be associated with The Hills Shire Council local government area, and must also relate to works undertaken within the area defined by the above Court judgement.

The Tables in Appendix A present TfNSW-funded works undertaken within the area defined in the above Court judgement. The purpose of the inclusion of these tables is



to demonstrate that Council's amount of Section 7.11 contribution expenditure has been matched by separate TfNSW funding. To date, TfNSW funding has generally matched and in some cases exceeded the amount provided by Council through Section 7.11 funding.

The Council- TfNSW agreement resulted in the preliminary 1992 works program that was continually updated on a 'needs' basis following the approval of individual developments along major traffic routes within the Shire.

In 1996 Council exhibited a five (5) year works program of Section 7.11-funded works for the period 1996/7 – 2000/1 which resulted in the inclusion of additional sites. A copy of this program is provided at Table A in Appendix A of this Plan. Table B presents equivalent TfNSW expenditure on TfNSW-funded works over the same period.

In 2001, the five year works program was updated for the new period 2001/2 – 2005/6. A table of Section 7.11-funded works for this period may be found at Table C in Appendix A of this Plan. Table D presents equivalent RMS expenditure on RMS-funded works over the same period.

In 2006, the five year works program was updated for the new period 2006/7 – 2010/11. A table of Section 7.11-funded works for this period may be found at Table E in Appendix A of this Plan. Table F presents the equivalent TfNSW expenditure on TfNSW-funded works proposed to occur over the same period.

In 2013, the five year works program was updated for the new period 2012/13 – 2016/17. A table of Section 7.11 and TfNSW-funded works for this period can be found in Table G in Appendix A of this Plan.

In 2018, the five year works program was updated for the new period 2017/18 – 2021/22. A table of Section 7.11 and TfNSW-funded works for this period can be found in Table H in Appendix A of this Plan.

The progress of road works as a result of funds expended from this Contributions Plan shall be reported in Council's biannual Status of Extractive Industries report.

## PART D – References

- *Sydney Regional Environmental Plan No.9 – Extractive Industries*, gazetted 17 October 1986 and now repealed.
- *Plan of Management – Extractive Industries, Baulkham Hills Shire Council*, prepared by Peter McNamara, 1989.
- *Plan of Management for Extractive Industries at Maroota, NSW* – Prepared by Resource Planning Pty Limited, June 1991.
- *The Supply of Construction Sand to the Sydney Market*, the Department of Mineral Resources, September 1995.
- *State Environmental Planning Policy (Resources and Energy) 2021*, which replaced Sydney Regional Environmental Plan No 9—Extractive Industry (No 2—1995).
- *Position Paper – Construction Sand Resources of the Sydney Region*, prepared by J M Spackman Geologists, Department of Mineral Resources, September 1992.
- Appeal No.10521 of 1994 Land & Environment Court of NSW, *Manaldo -v- Baulkham Hills Shire Council*, 1995.
- Appeal No.10064 of 1997 Land & Environment Court of NSW, *Neville Francis Diamond –v- Baulkham Hills Shire Council*, 1998.
- Appeal No.10501 & 10502 of 1987 Land & Environment Court of NSW, *Collin C Donges & Associates Pty Limited –v- Baulkham Hills Shire Council*, 1989.
- *Study of Section 94 Contributions made for the Provision of Roads, Traffic facilities and Parking – Stage 1 Report*, prepared by Stapleton & Hallam for Western Sydney Regional Organisation of Councils, September 1991.
- *The Old Northern Road Strategic Route Study*, prepared by GHD Consultants for the Roads & Traffic Authority, August 1999.

## APPENDIX A – Works schedules levied under Plan

**Table A - Section 7.11 funded works 1996/7 – 2000/1:**

Item No.	Road	From (km)	To (km)	Works	Length (m)	Cost (\$)
1	Old Northern Road	0.0	1.0	Road Base patch, formation widening, shoulder construction, reseal	1000	\$320,460
2	Old Northern Road	1.0	2.0	Widen formation at rock cutting Widen formation and drainage Stabilise pavement/ shoulders and seal	1000	\$170,543 \$165,500 \$410,000
3	Old Northern Road	2.0	4.9	Stabilise pavement/ shoulders and seal	2900	\$414,000
4	Old Northern Road	4.9	6.9	Stabilise pavement/ shoulders and seal	2000	\$560,200
5	Old Northern Road	6.9	9.7	Road Base patching Shoulder widen, stabilisation and reseal	2800	\$291,720 \$373,890
6	Wisemans Ferry Road	7.7	13.1	Construct sealed shoulders Linemarking	5400	\$235,000 \$10,044
7	Wisemans Ferry Road	11.68	12.68	Reseal pavement	1000	\$89,820
						<b>\$3,041,177</b>

**Table B - TFNSW funded works 1996/7 – 2000/1:**

Item No.	Road	From (km)	To (km)	Works	Length (m)	Cost
1	Old Northern Road	26.9	29.3	Deep asphalt overlay, geometric adjustment, drainage	2400	\$3,000,000
2	Old Northern Road	0.0	31.2	Asphalt patch	31200	\$1,706,900
3	Old Northern Road	0.0	31.2	Drainage Maintenance	31200	\$422,400
4	Old Northern Road	0.0	31.2	Edge Repair	31200	\$18,200
5	Old Northern Road	0.0	31.2	Furniture Maintenance	31200	\$76,500
6	Old Northern Road	0.0	31.2	Linemarking & Sign Maintenance	31200	\$626,900
7	Old Northern Road	0.0	31.2	Misc Maintenance	31200	\$349,700
8	Old Northern Road	0.0	31.2	Pothole Filing (permanent)	31200	\$244,800
9	Old Northern Road	0.0	31.2	Shoulder Grading	31200	\$107,700
10	Old Northern Road	0.0	31.2	Vegetation Control	31200	\$147,600
11	Wisemans Ferry Road	0.0	18.2	Asphalt Patch	18200	\$1,222,400
12	Wisemans Ferry Road	0.0	18.2	Crushed Rock Patch	18200	\$407,900
13	Wisemans Ferry Road	0.0	18.2	Drainage Maintenance	18200	\$164,200
14	Wisemans Ferry Road	0.0	18.2	Edge Repair	18200	\$20,200
15	Wisemans Ferry Road	0.0	18.2	Furniture Maintenance	18200	\$28,300
16	Wisemans Ferry Road	0.0	18.2	Linemarking & Sign Maintenance	18200	\$109,900
17	Wisemans Ferry Road	0.0	18.2	Misc Maintenance	18200	\$12,100
18	Wisemans Ferry Road	0.0	18.2	Pothole Filing (permanent)	18200	\$14,700
19	Wisemans Ferry Road	0.0	18.2	Shoulder Grading	18200	\$269,600
20	Wisemans Ferry Road	0.0	18.2	Vegetation Control	18200	\$36,600
						<b>\$8,986,600</b>

**Table C - Section 7.11 funded works 2001/2 – 2005/6:**

Item No.	Road	From (km)	To (km)	Works	Length (m)	Cost
1	Old Northern Road	9.7	10.5	AC fill to rock cut face, Normal widening elsewhere	800	\$155,000
2	Old Northern Road	10.5	12.9	Widen pavement fell some trees	2400	\$627,000
3	Old Northern Road	12.9	13.1	Do nothing except reseal full width	200	\$ -
4	Old Northern Road	13.1	14.9	Widen pavement fell some trees	1800	\$687,000
5	Old Northern Road	14.9	15.6	Widen with AC and reseal	700	\$ -
6	Old Northern Road	15.6	18.1	Widen pavement, reseal	2500	\$894,000
7	Old Northern Road	18.1	18.5	Do nothing except reseal full width	400	\$ -
8	Old Northern Road	18.5	19.2	Glenorie widen pavement, retaining wall in park	700	\$287,200
9	Wisemans Ferry Road	12.1	18.2	Selected widening of inside curves, shoulder resheet, heavy patching	6100	\$ -
						<b>\$2,650,200</b>

\* Chainage 0.00 km at Wisemans Ferry Rd for Old Northern Road

\* Chainage 0.00 km at Cattai Ck for Wisemans Ferry Road

**Table D - TfNSW funded works 2001/2 – 2005/6:**

	TOTAL	2005/6 \$,000	2004/5 \$,000	2003/4 \$,000	2002/3 \$,000	2001/2 \$,000
Routine pavement	\$529,400	156.6	123.0	94.7	84.7	70.4
Routine corridor	\$1,890,400	458.6	485.0	399.0	293.7	254.0
Heavy patching	\$1,283,700	236.0	237.6	282.3	265.1	262.7
Guard rail upgrade	\$136,200	0.0	136.2	0.0	0.0	0.0
Resurfacing	\$1,044,000	209.0	506.0	329.0	0.0	0.0
Rehabilitation	\$206,000	0.0	193.0	0.0	0.0	13.0
Pavement reconstruction	\$3,291,000	0.0	0.0	0.0	1278.0	2013.0
	<b>\$8,380,700</b>					

TfNSW has confirmed that the works detailed in the above table of TfNSW-funded works occurred within the area defined by the Land & Environment Court judgement for case of Collin C Donges & Associates Pty Ltd v BHSC in 1989. The judgement states in part that:

*(v) The Council will pay all of the said contribution payments into a specially identified trust account for payment towards the rehabilitation, restoration, repair and/or maintenance of Old Northern Road, between New Line Road and the Crown road immediately adjacent to the northern boundary of Portion 117, and Wisemans Ferry Road, between its intersection with Old Northern Road and the Baulkham Hills Shire boundary at Cattai Creek.*

TfNSW has also confirmed that the costs in the above table are associated only with The Hills Shire Council and do not include costs associated with neighbouring local Councils.



**Table E - Section 7.11 funded works 2006/7 – 2011/12:**

Item No.	Road	From (km)	To (km)	Priority of works+	Works	Length (km)	Cost (\$)
1	Old Northern Road	1.05	1.55	1	Northbound overtaking lane at Maroota	0.50	\$1,000,000
2	Old Northern Road*	0	19.0	2	Asphalt shape correction, Wisemans Ferry Road to Glenorie (selected lengths)	12.0	\$1,900,000
3	Old Northern Road	29.3	29.5	3	Shoulder widening and sealing at Dural	0.15	\$100,000
4	Old Northern Road	19.55	19.60	4	Culvert and shoulder widening at Glenorie	0.05	\$20,000
							<b>\$3,020,000</b>

\* Chainage 0.00 km at Wisemans Ferry Rd for Old Northern Road

+ Priority of works derived from the *Old Northern Road Strategic Route Study*, prepared by GHD Consultants for the Roads & Traffic Authority, August 1999.

**Table F - TfNSW funded works 2006/7 – 2011/12:**

	Total	2006/7 \$,000	2007/8 \$,000	2008/9 \$,000	2009/10 \$,000	2010/11 \$,000
Routine pavement	\$879,980	165.9	170.7	175.8	181.1	186.5
Routine corridor	\$1,915,156	361.4	371.5	382.7	393.8	405.8
Heavy patching	\$1,255,367	266.3	266.3	240.9	240.9	240.9
Guard rail upgrade	\$231,635	46.3	46.3	46.3	46.3	46.3
Resurfacing	\$976,479	189.5	196.7	196.7	196.7	196.7
Pavement reconstruction	\$8,997,000	2000.0		3247.0	3750.0	0.0
	<b>\$14,255,617</b>	3029.4	1051.7	4289.4	4808.9	1076.3

TfNSW has confirmed that the works detailed in the above table of TfNSW-funded works are proposed to occur within the area defined by the Land & Environment Court judgement for case of Collin C Donges & Associates Pty Ltd v BHSC in 1989. The judgement states in part that:

*(v) The Council will pay all of the said contribution payments into a specially identified trust account for payment towards the rehabilitation, restoration, repair and/or maintenance of Old Northern Road, between New Line Road and the Crown road immediately adjacent to the northern boundary of Portion 117, and Wisemans Ferry Road, between its intersection with Old Northern Road and the Baulkham Hills Shire boundary at Cattai Creek.*

TfNSW has also confirmed that the costs in the above table are associated only with The Hills Shire Council and do not include costs associated with neighbouring local Councils.

**Table G – TfNSW and Section 7.11 funded works 2012/13 – 2016/17:**

The Section 7.11 five (5) year works program for 2012/13 – 2016/17 for Contributions Plan No.6 – Extractive Industries is provided below.

Road	From (km)	To (km)	Length (m)	Description	Project cost	Section 94 Hills Shire
Old Northern Road	800m north of Canoelands Rd	1800m north of Canoelands Rd	1000	overtaking lane	\$1,400,000	\$1,190,000
Old Northern Road	Cattai Ridge Rd	2000m north of Cattai Ridge Rd	2000	pavement rehabilitation	\$1,400,000	\$700,000
Old Northern Road	200m south of Bangor Rd	Wylids St	1100	pavement rehabilitation	\$800,000	\$400,000
Old Northern Road	200 m south of East St	400m north of Short St	900	pavement rehabilitation	\$650,000	\$325,000
Old Northern Road	Wisemans Ferry Road	Glenorie	4000	asphalt shape correction - Glenorie selected lengths	\$2,200,000	\$880,000
Wisemans Ferry Rd		Obriens Rd	300	pavement rehab oaks golf course	\$450,000	\$225,000
Old Northern Road	Glenorie	Dural, selected lengths	3000	shoulder strengthening and initial seal	\$500,000	\$250,000
Old Northern Road	Maroota Public School		100	footway and parking lane	\$100,000	\$100,000
						<b>\$3,495,000</b>

TfNSW has confirmed that the works detailed in the above table of TfNSW and Section 7.11-funded works occurred within the area defined by the Land & Environment Court judgement for case of Collin C Donges & Associates Pty Ltd v BHSC in 1989.

TfNSW has also confirmed that the costs in the above table are associated only with The Hills Shire Council and do not include costs associated with neighbouring local Councils. TfNSW has confirmed that TfNSW funding for road works and maintenance in these areas has matched and exceeded the amount provided by Council through Section 7.11 funding during this period.

**Table H – TfNSW and Section 7.11 funded works 2017/18 – 2021/22:**

The Section 7.11 five (5) year works program for 2017/18 – 2021/22 for Contributions Plan No.6 – Extractive Industries is provided below.

Year		Item	Road	Approximate Location	Length (m)	Description	Total Cost	Section 7.11 Contribution	TfNSW Contribution
1	2017/18	1	Old Northern Road	0-2km North Mt View Rd	2100	pavement resurfacing with heavy patching	\$ 1,370,000	\$ -	\$ 1,370,000
2	2018/19	2	Old Northern Road	North of Canoelands Rd, Maroota	1000	overtaking lane works	\$ 5,010,000	\$ 5,010,000	\$ -
	2018/19	3	Old Northern Road	Galston Rd, Dural	900	pavement resurfacing with heavy patching	\$ 540,000	\$ -	\$ 540,000
	2018/19	4	Old Northern Road	Timaru Street, Forrest Glen	1800	pavement resurfacing with heavy patching	\$ 1,130,000	\$	\$ 1,130,000
	2018/19	5	Old Northern Road	Canoelands Rd, Maroota	900	pavement resurfacing with heavy patching	\$ 1,160,000	\$	\$ 1,160,000
	2018/19	6	Old Northern Road	Mount View Rd, Forrest Glen	2300	pavement resurfacing with heavy patching	\$ 1,271,000	\$ -	\$ 1,271,000
3	2019/20	7	Wisemans Ferry Road	Wisemans Ferry Road (selected lengths)	2400	pavement resurfacing with heavy patching for selected sections	\$ 1,200,000	\$ 600,000	\$ 600,000
4	2020/21	8	Wisemans Ferry Road	Wisemans Ferry Road (selected lengths)	3000	pavement resurfacing with heavy patching for selected sections	\$ 2,741,760	\$ 1,000,000	\$ 1,741,760
5	2021/22	9	Old Northern Road	Mount View Rd, Forrest Glen	2000	pavement resurfacing with heavy patching for selected sections	\$ 1,100,000	\$ 500,000	\$ 600,000
						Total	\$ 15,522,760	\$ 7,110,000	\$ 8,412,760

TfNSW has confirmed that the works detailed in the above table for Years 1 & 2 of TfNSW and Section 7.11-funded works occurred within the area defined by the Land & Environment Court judgement for the case of Collin C Donges & Associates Pty Ltd v BHSC in 1989. Further, TfNSW has advised that Items 7, 8 and 9 within the above table are no longer required.

TfNSW has also confirmed that the costs in the above table are associated only with The Hills Shire Council and do not include costs associated with neighbouring local Councils. TfNSW has confirmed that TfNSW funding for road works and maintenance in these areas has matched and exceeded the amount provided by Council through Section 7.11 funding during this period.

## **APPENDIX B – Sample condition of consent**

### **SECTION 7.11 DEVELOPER CONTRIBUTIONS**

The applicant shall pay or procure payment to the Council of a developer contribution under Section 7.11 of the Environmental Planning and Assessment Act (1979) at the current rate of \$0.XX per tonne of all extracted/processed material transported from the subject site, and in respect of the said contribution, the following provisions shall apply:

- a) The developer contribution will be calculated and paid monthly from the date on which development consent became effective. The amount of contributions imposed in a development consent will be calculated based on the contribution rate applicable to Contributions Plan No.6 at the time of the issuing of development consent.
- b) The contribution rate imposed under this condition will be indexed and adjusted annually in accordance with the Consumer Price Index for Sydney applicable to each year ending 30 June, commencing 1 July 2008 for the duration of the development consent. The quantum of the adjustment will be consistent with the change in CPI over the preceding 12 months to 30 June of each year. At the time of payment of developer contributions, the contributions payable will be adjusted and the amount payable will be calculated on the basis of the contribution rate that is applicable at the time of payment.
- c) On or before the fourteenth day of each month of the duration of the consent, the applicant shall deliver or procure delivery to the Council of true certified copy weighbridge or other returns or records showing the true quantities of extracted/processed material transported from the property during the immediately preceding month and the Council will then, as soon as it can conveniently do so, issue an invoice to the applicant or its consenting assignee, who will pay to the Council within fourteen (14) days of the date thereof.
- d) The Council has the right to inspect and have the original records relating to any of the extracted/processed material, including numbers and types of laden trucks, trailers and load quantities transported from the property audited by any person nominated by its internal accountant any time when he may, be written request so require.
- e) The Council will pay all of the said contribution payments into a specially identified account for payments towards the rehabilitation, restoration, repair and/or maintenance of Old Northern and Wisemans Ferry Roads between the intersection of the access road and The Hills Shire boundary at Cattai Creek and other projects identified in the Plan of Management for Extractive Industries adopted by Council.

This condition has been imposed in accordance with Contributions Plan No.6 – Extractive Industries. A copy of this plan may be inspected on Council's website: [www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au).

## APPENDIX C – Definitions relevant to this Plan

Unless otherwise provided, definitions for terms used in this Contributions Plan will be those definitions used in the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2021 and The Hills Local Environmental Plan.

CPI	Consumer Price Index
Developer contributions	Means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit
EIS	Environmental Impact Statement
EP&A Act	Means the Environmental Planning and Assessment Act 1979, as amended
EP&A Regulation	Means the Environmental Planning and Assessment Regulation 2021, as amended
Extractive Industry	Means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunneling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.
Extractive Material	Means sand, gravel, clay, turf, soil, rock, stone or any similar substance.
LEP	Means The Hills Local Environmental Plan
S.7.11	Section 7.11 of the EP&A Act (formerly known as Section 94)
RMS	Roads and Maritime Services (now known as Transport for NSW)
TfNSW	Transport for NSW (formally known as Roads and Traffic Authority then Roads and Maritime Services or)
The Hills Shire Council	The Council formerly known as the Baulkham Hills Shire Council
Works in kind	Means the construction or provision of the whole or part of a public facility that is identified in the works schedule to the Contributions Plan