

**DEVELOPER CONTRIBUTIONS MORATORIUM – TOWNSHIPS
OF KEMPSEY AND FREDERICKTON****Procedure 1.1.17**

Policy No. and title	1.1	Development Control Policy
Procedure	1.1.17	Developer Contributions Moratorium – Townships of Kempsey and Frederickton
Version	1	
Date Adopted	20 October 2015	

1 Introduction

This procedure has been adopted in accordance with the aims and objectives of Council's Development Control Policy 1.1 to set out the process related to a moratorium on the payment of developer contributions for *residential subdivision* and *dwelling developments* in the townships of Kempsey and Frederickton.

2 Summary Statement of Intent

The following is a plain English summary of the contents and intent of this procedure to assist in interpretation only. This procedure:

- a) Seeks to respond to the economic impacts created by the Pacific Highway bypass of Kempsey and Frederickton.
- b) Is intended to provide concessions to developers seeking to subdivide and/or undertake dwelling developments on residential zoned land in Kempsey and Frederickton only.
- c) Sets out the process for implementing a moratorium on the levying of developer contributions.
- d) Specifies the scope of both land and development types that are eligible to receive concessions.
- e) Specifies how the concessions will be applied.
- f) Specifies the period over which the moratorium will apply.

3 Interpretation

The terms used in this procedure include:

Dwelling development – includes any of the following forms of development as defined under Kempsey Local Environmental Plan 2013:

- a) Attached dwelling
- b) Dual occupancy (attached)
- c) Dual occupancy (detached)
- d) Dwelling house

- e) Group home
- f) Multi dwelling housing
- g) Residential flat building
- h) Secondary dwelling
- i) Semi-detached dwelling

Residential subdivision – means subdivision in accordance with Clause 4.1 and 4.1A of Kempsey Local Environmental Plan 2013.

4 Purpose of this Procedure

The purpose of this procedure is to stimulate the development and sale of residential allotments within the townships of Kempsey and Frederickton.

5 Scope of this Procedure

- a) This procedure sets out the process to be followed in implementing a moratorium on the payment of developer contributions entitled to be levied pursuant to Section 64 of the Local Government Act, 1993 and Section 94 of the Environmental Planning and Assessment Act, 1979 for *residential subdivision* and *dwelling developments* on land zoned R1- General Residential, R3 Medium Density Residential and RU5 Village under Kempsey Local Environmental Plan 2013 within the townships of Kempsey and Frederickton only.

- i) Residential Subdivision

This procedure shall apply to all lots for which a development consent for *residential subdivision* has been granted and remains valid, either before or after the *nominated date of commencement* of this procedure, but for which a Subdivision Certificate has not been issued.

- ii) Dwelling Development

This procedure shall also apply to all dwelling developments for which a development consent has been granted and remains valid, either before or after the nominated date of commencement of this procedure, but for which a Construction Certificate or Complying Development Certificate has not been issued.

- iii) Nothing in this procedure shall be construed as applying to any lot for which a Subdivision Certificate for *residential subdivision* has been issued or for any dwelling development for which a Construction Certificate or Complying Development Certificate has been issued prior to the nominated date of commencement of this procedure.

- b) Section 64 Contributions

- i) Pursuant to Section 64 of the Local Government Act, 1993, Council is entitled to impose conditions requiring a Certificate of Compliance to be obtained in accordance with Section 304 of the Water Management Act, 2000.
 - ii) Pursuant to Section 306(2)(a), in satisfaction of the requirements for issuing a Certificate of Compliance, Council is entitled to require payment of a monetary contribution towards the provision of water and sewerage services

in accordance with Council's adopted Developer Servicing Plans for Water Supply Services (2006) and Developer Servicing Plans for Sewerage Services (2006).

- iii) Pursuant to Section 306(2)(b), in satisfaction of the requirements for issuing a Certificate of Compliance, in addition to payment of a monetary contribution, Council may also require works to be carried out to extend services to a proposed subdivision.
 - iv) This procedure is restricted to the payment of any required monetary contribution pursuant to Section 306(2)(a) of the Water Management Act, 2000, only and shall not be construed as applying to any works required to be undertaken to extend services to a proposed *residential subdivision* or *dwelling development*.
- c) Section 94 Contributions
- i) Section 94(1)(a) of the Environmental Planning and Assessment Act, 1979, provides that Council is able to require the dedication of land at no cost to Council.
 - ii) Section 94(1)(b) provides that Council is able to require payment of a monetary contribution towards the provision of public services and facilities.
 - iii) This procedure is restricted to the payment of any required monetary contributions pursuant to Section 94(1)(b) of the Environmental Planning and Assessment Act, 1979 only and shall not be construed as applying to any requirement to dedicate land free of cost to Council in respect to any proposed *residential subdivision* or *dwelling development*.
- d) Works In Kind
- i) In accordance with relevant contributions plans and adopted practice, Council is prepared to consider allowing works-in-kind to offset the amount of any contributions required under a development consent to permit *residential subdivision* or *dwelling development*.
 - ii) Where an agreement is reached to allow works-in-kind, the agreed value of the offset shall apply to the total amount of contributions required, inclusive of contributions that would otherwise have been required as if this procedure did not exist.
 - iii) In the case of staged subdivisions, the value of any works-in-kind in excess of the required contribution for that stage, that for this procedure, would otherwise be payable, may be considered by way of a credit for subsequent stages.
- e) Payment of Section 64 and Section 94 Contributions
- This procedure specifies the pro rata rate at which Section 64 and Section 94 contributions are payable during the moratorium period specified in this procedure.

6 Moratorium Period

The moratorium period referred to in this procedure shall expire after five (5) years from the Nominated Date of Commencement.

7 Nominated Date of Commencement

The nominated date of commencement of this procedure 27 October 2015.

8 Implementation

- a) Residential subdivision or dwelling development of land zoned R1 - General Residential, R3 Medium Density Residential and RU5 Village under Kempsey Local Environmental Plan 2013 requires submission and approval of a development application in accordance with the requirements of the Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation, 2000.

i) Subdivision Certificate

Pursuant to Section 109J of the Environmental Planning and Assessment Act, 1979, in accordance with conditions imposed on any development consent for subdivision, Section 64 and Section 94 contributions are required to be paid to Council prior to release of the Subdivision Certificate that allows registration of the plan of subdivision with the NSW Land and Property Information Service.

ii) Construction Certificate

Section 109F of the Environmental Planning and Assessment Act, 1979, provides that a Construction Certificate must not be issued unless the requirements of the Environmental Planning and Assessment Regulation, 2000 have been met. Clause 146(b) and (c) provide that a Construction Certificate must not be issued unless conditions of consent have been met, including payment of any contributions.

iii) Complying Development Certificate

A Complying Development Certificate(CDC) states that development, including dwelling development is complying development where it complies with all applicable development standards and other requirements prescribed by the regulations. Section 85A(7) and (9) of the Act requires the certifier issuing the CDC must impose conditions requiring payment of contributions, where applicable.

b) Pro rata Contribution Rates

- i) In determining development applications for *residential subdivisions* and *dwelling developments*, conditions will be imposed requiring payment of all contributions at the rate applying at the time of release of the Subdivision Certificate/Construction Certificate/Complying Development Certificate.
- ii) In order to satisfy this requirement, Council will accept payment at a reduced as follows:

Year	Year 1	Year 2	Year 3	Year 4	Year 5
Proportion of Required Payment	0%	0%	15%	25%	45%

For example, based on the total current (1 July 2015) Section 94 and 64 contributions applicable to a residential subdivision at West Kempsey, contributions per lot are as follows:

Year	Year 1	Year 2	Year 3	Year 4	Year 5
Total Contributions per Lot/ET (\$30,935)	0	0	\$4,640	\$7,734	\$13,921

NOTE: The example provided is based on Council's Section 64 and Section 94 plans which may vary subject to their review within the moratorium period and between different localities.

c) Development Consent Advice

Development consents for residential subdivision within the township of Kempsey will include an advice to the applicant referring to this procedure

Variation

Council reserves the right to review, vary or revoke this procedure which will be reviewed periodically to ensure it is relevant and appropriate.