



Section 7.12

Development Contributions Plan 2019

March 2019 – DRAFT Review: # 6268/2019

Notes and Corrections to this Issue

Please note the following and corrections:

All reference to Section 94A has been altered to Section 7.12 to reflect the changes to the Environmental Planning and Assessment Act, 1979.

Amendments and Revisions

Issue No	Date	Issue Title	Amendment
1	24 April 2013	Adopted by Council	
2	6 May 2013	Effective Date	
3	26 May 2016	Review – Public Consultation	
4	14 Sept 2017	Adopted by Council	Addition of Valla Urban Growth Area
5	5 March 2019	Review and update	Change of name to Section 7.12 Contributions Plan, amendments and additions to provide explanations and notes regarding repeal of Section 94 contribution plans

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Introduction and Requirements of the Plan

1 Introduction

Development contributions are contributions made by those undertaking development approved under the Environmental Planning and Assessment Act 1979 (the Act).

Contributions may be in the form of money, the dedication of land or some other material public benefit (or a combination of these).

The mechanisms available for development contributions are limited to:

- In the case of contributions made under Section 7.11 (previously Section 94) and Section 7.12 (previously Section 94A) of the Act – toward the provision or improvement of amenities or services (or the recouping of the cost of provision or improvement of amenities or service), or
- In the case of contributions made under a planning agreement prepared in accordance with Sections 7.4 to 7.10 of the Act toward public purposes.

This plan deals with Section 7.12 contributions.

2 Name of this Contribution Plan

This plan is the Nambucca Shire Council Section 7.12 Development Contributions Plan 2019.

3 Section 7.12 levies

Sections 7.11 and 7.12 of the Act provide Council the means to levy contributions towards the cost of public facilities to meet the increased demand created by development. Section 7.12 contributions do not require a link between the development, infrastructure and the contribution.

A condition of development consent may be imposed by Council under a Section 7.12 Contribution Plan with a requirement that the applicant pay a levy based on a percentage of the proposed cost of carrying out the development. A condition under Section 7.12 that is allowed by and determined in accordance with a Contributions Plan may not be disallowed or amended by the Court on appeal.

The contributions collected will assist Council in the provision, extension or augmentation of public amenities or public services. The application of the money is subject to any relevant provision of the Contribution Plan and the Works Schedule at Appendix A.

4 Purpose of the Contributions Plan

The purpose of this Contributions Plan is:

- 1 to authorise the Council to impose a condition on certain development consents and complying development certificates requiring the payment of a contribution pursuant to Section 7.12 of the Act;
- 2 to require a certifying authority, (Council or an accredited Private Certifier), to impose, as a condition of issuing a complying development certificate, a requirement that the applicant pay to Council a contribution determined in accordance with this Plan;
- 3 to assist the Council to provide public facilities and amenities which are required to maintain and enhance amenity and service delivery within the shire;
- 4 to state the purposes for which the contributions are required; and
- 5 provide for the governance of the contributions and their application in accordance with the Act and Regulations.

5 Timeframes of the Contributions Plan

This Section 7.12 Contributions Plan aims to cater for development to 2029. It is anticipated that the Plan will be reviewed in the intervening period and updated. Council recognises demographic changes to the existing and new population drives demand for public services and amenities, and this Plan seeks to respond to these future needs of the community.

6 Area to which the Plan applies

This plan applies to all land within the Nambucca Shire Council Local Government area, except for land with identified Mines and Extractive Industries covered by the Section 7.11 Contributions Plan – Mines and Extractive Industries Road Maintenance.

7 Types of Development to which the Plan applies

This plan applies to all development consents and complying development certificates on the land to which the Plan applies.

Note: “development” referred to in this clause has the same meaning as in the Act.

8 Date of commencement of the Plan

This Contributions Plan takes effect on 1 July 2019.

Development applications and applications for complying development certificates determined on, or after, this date will be subject to the provisions of this Contributions Plan.

9 Relationship to other Plans and Policies

This plan supersedes and repeals the following current contributions plans applying to the Nambucca Shire local government area by amending and/or repealing the following:

- Nambucca Shire Council – Section 94A Development Contribution Plan (2016 Review);
- Nambucca Shire Council – Community Facilities and Public Open Space 2008 Contributions Plan (2015 Review);
- Nambucca Shire Council - Section 94: Local Roads and Traffic Infrastructure Developer Contributions Plan 2016;
- Nambucca Shire Council – Section 94: Surf Life Saving;
- Nambucca Shire Council – Section 94: Project Administration;
- Nambucca Shire Council – Section 94: Smiths Lane Local Road and Traffic Infrastructure Developer Contribution Plan 2010;
- Nambucca Shire Council - Section 94: Upper Warrell Creek Road; and
- Nambucca Shire Council - Section 94: Upper Warrell Creek Road Overbridge.

This plan complements the Nambucca Shire Council Section 7.11 Contributions Plan – Mines and Extractive Industries Road Maintenance.

Unspent contributions raised and paid under the authority of the previous Section 94 or Section 94A Contributions Plans:

- will be directed towards achieving the outcomes identified in the respective plans, as noted in the Works Schedules, or be reallocated towards relevant facilities and infrastructure in the Works Schedule of this Plan;

10 Summary of facilities

This Plan identifies the need for contributions towards the following categories of public facilities and amenities:

- Roads and related infrastructure;
- Pedestrian and cycling infrastructure;
- Open Space and Recreation, including playgrounds;
- Civic and Community facilities.

11 Summary of contribution rates

The contribution rate is calculated as a percentage of the cost of development, as per the table below:

Cost of development	Contribution levy rate %
All development valued at \$100,000 or less	0.0%
All development valued at \$100,001 up to \$200,000	0.5 %
All development valued in excess of \$200,000	1.0 %

The determination of the cost of development is explained in Section 2.4 of this plan.

Certain exemptions apply to the contributions. Details can be found in Section 2.10 of this plan.

12 Demand for public amenities and public services

This plan is based on the provision of new, extended and augmented public amenities, services and infrastructure to support the growth and development of the Nambucca Shire Council. New residents will have inadequate levels of service if Council does not take action to provide amenities and infrastructure to cope with the new growth or extend and augment existing facilities. The levels of service for the existing population will also decline if there is inadequate public investment.

The population projections undertaken by Council and using ABS Census 2016 data, indicate that continued population growth in Nambucca Shire is expected. The projected population for 2026 is expected to be around 22,150 people, an increase of 180 people per year between 2016 and 2026, or an increase of 0.9% per year.

As part of this population growth there will be an associated growth in all development within the shire. This increase in development will create a demand for new and augmented public amenities and facilities.

To cater for this increased demand for public facilities, Council proposes to carry out the construction of facilities in areas identified in Appendix A.

Administration and Operation of the Plan

1 Payment of the contribution

This Plan authorises Council to require the payment of a monetary contribution as a condition of development consent in accordance with the provisions of this Plan. Monetary Section 7.12 development contributions are exempt from GST.

Contributions will be determined on the basis of the proposed cost of development.

2 Calculation of the contribution

The contribution calculated as follows:

$$\text{Levy Payable} = \%C \times \$C$$

Where

%C is the levy rate applicable

\$C is the proposed cost of carrying out the development as certified

3 Contribution rate

The contribution rate is calculated as a percentage of the development value, as per the table below:

Cost of development	Contribution levy rate %
All development valued at \$100,000 or less	0.0%
All development valued at \$100,001 up to \$200,000	0.5 %
All development valued in excess of \$200,000	1.0 %

4 Determining the cost of development

The cost of carrying out a proposed development will be determined in accordance with clause 25J of the Environmental Planning & Assessment Regulation 2000. A copy of this clause is provided in Appendix C.

To provide reliable information on the cost of carrying out a development, the applicant for a development consent or complying development certificate is to provide details with the application in accordance with the plan. There are two levels of information provision, depending on the scale of the cost of development:

Development cost between \$100,001 and \$500,000

Where the cost of carrying out a proposed development is in this range, a Cost Summary Report, (see Appendix B), must be completed by the applicant, or a nominated representative such as the project architect or project manager.

Development cost more than \$500,000

Where the cost of carrying out a proposed development is in this range, a Detailed Cost Report, (see Appendix B), must be completed by a Quantity Surveyor registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate an equivalent qualification.

Without limitation to the above, the valuation of the cost of development may be reviewed and the services of an independent qualified person may be sought to verify the development cost assessment. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant.

5 Complying Development Certificates

Pursuant to Section 7.12 of the Environmental Planning & Assessment Act 1979, where an accredited certifier issues a complying development certificate for a development to which this Plan applies, the certificate must be subject to a condition requiring the applicant to pay to Council the contribution, determined in accordance with the formulas contained in this Plan.

The condition imposed by an accredited certifier on a complying development certificate must include details of the requirements of Section 2.6 and 2.7 of this Plan concerning when payment of the levy is to be made to Council and the requirement for evidence confirming payment.

The condition imposed must be consistent with Council standard Section 7.12 consent conditions and be in accordance with this Plan. It is the responsibility of accredited certifiers to correctly calculate the contribution and apply the Section 7.12 contribution.

The imposition of a condition on a complying development certificate issued by a certifying authority as authorised by this plan is subject to compliance with any Ministerial directions.

Complying Development Certificates must be assessed and issued by Council if the developer wishes Council to consider land dedication, material public benefits or works in kind.

6 Construction Certificates

In accordance with Clause 146 of the Environmental Planning and Assessment Regulation, a certifying authority must not issue a construction certificate for building work or subdivision works under development consent unless it has verified that each condition requiring the payment of monetary contributions has been satisfied.

In particular, the certifier must ensure that the applicant provides receipts confirming that contributions have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the Council in accordance with Clause 142(2) of the Environmental Planning and Assessment Regulation. Failure to follow this procedure may render such a certificate invalid.

The only exception to this requirement is where works in kind, material public benefit, dedication of land or deferred arrangement has been agreed to by the Council. In such cases the Council will issue a confirmation letter regarding the alternative payment method agreed to with the applicant.

7 Timing of payments

In accordance with this Plan, contribution payments shall be as follows:

- Development applications involving subdivision only – prior to the release of the Construction Certificate;
- Development applications involving building work only – prior to the release of the Construction Certificate;
- Development involving both subdivision and building work (eg Integrated housing developments) – prior to the release of the Construction Certificate, or the release of the Subdivision Certificate, whichever occurs first; and
- Development applications where no Construction Certificate is required – prior to the issue of an Occupation Certificate.
- Complying Development Certificates – prior to commencement of works;

The amount of any monetary contribution to be paid will be the contribution payable at the time of consent.

8 Alternative to paying a levy

Council may accept the dedication of land or provision of a material public benefit or works in kind in part or full satisfaction of a Section 7.12 levy under this Plan.

As a general rule, only land or works directly associated with the roads and traffic improvements, public domain improvements and community facilities as indicated in Appendix A may be considered as a material public benefit or work in kind in satisfaction of the contributions levy. Applicants must provide full details, costs and valuations of land or works.

If Council agrees to an alternative to the levy, it will either require the alternative as a condition of consent, or accept it under the terms of a Voluntary Planning Agreement.

9 Deferred or periodic payments

Council will accept a deferred or periodic payment of contributions subject to the contribution being secured by Bank Guarantee and the deferment being no longer than 24 months. In such a case, the applicant must make a written request.

Council will require the applicant to provide a bank guarantee by a bank for the full amount of the contribution or the outstanding balance on the condition that:

- 1 indexing will be calculated from the date the contribution was due until the date of payment;
- 2 the bank guarantee be by a bank for the amount of the total contribution, or the amount of any outstanding contribution plus an amount equal to 25 months' interest plus any charges associated with establishing or operating the bank security;
- 3 the bank unconditionally pays the guaranteed sum to the Council if the Council so demands in writing not earlier than 24 months from the provision of the guarantee or completion of the work;
- 4 the bank must pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development;
- 5 the bank's obligations are discharged when payment to the Council is made in accordance with this guarantee or when Council notifies the bank in writing that the guarantee is no longer required;
- 6 where a bank guarantee has been deposited with Council, the guarantee shall not be cancelled until such time as the original contribution and accrued interest has been paid;
- 7 the applicant will be charged an administrative fee based on the professional fees set in Council's Revenue Policy; and
- 8 periodic payments for a staged development will be on a pro rata basis – the proportion of the stage of the development in relation to the overall development.

10 Exemptions to the levy

Under Directions issued by the Minister in relation to Section 7.17 of the Act, a levy under Section 7.12 cannot be imposed on development:

- If a development contribution under former Section 94 of the *Environmental Planning and Assessment Act 1979* has been required in respect of the subdivision of land, (*initial subdivision*), a levy under Section 7.12 of the Act may not be required in respect of any other development on the land, unless that other development will, or is likely to, increase the demand for public amenities or public services beyond increase in demand attributable to the initial subdivision.

In addition, certain types of development are effectively exempt from a levy under Section 7.12 because they are not to be included in the costing of a development for the purposes of a levy under Clause 25J of the Regulation including:

- Enabling access by disabled persons in respect of the development;
- Energy and water efficiency measures associated with the development;
- Any development that is provided as affordable housing;
- Any development that is the adaptive reuse of a heritage item.

Council may also not impose a Section 7.12 levy on the following:

- An application on behalf of Council for infrastructure, including that funded by Section 7.11 or 7.12 of the Act, such as, but not limited to, libraries, community facilities, recreations areas, recreation facilities and car parks;
- An application for development that involves rebuilding or repair after natural disasters such as flooding or bushfires;
- An application for demolition (where there is no replacement building or development); and
- In rare exceptional cases, where Council considers an exemption is warranted, and the decision is made by formal resolution of Council at an Ordinary Council meeting.

To apply for an exemption to the payment of a Section 7.12 contribution, a written application must be submitted to Council at development assessment stage, giving reasons under the relevant category, and providing any necessary evidence and justification for the exemption.

11 Administration of the Section 7.12 funds

Nambucca Shire Council is to administer the money obtained from the Section 7.12 levy and make decisions on the application of funds applied towards the provision, extension or augmentation of public amenities, infrastructure or public services for the Nambucca Shire Council area in accordance with the Environmental Planning & Assessment Act 1979 and Regulation 2000.

This plan expressly authorises Section 7.12 levies paid for different purposes to be pooled and applied (progressively or otherwise) for the purposes indicated in Appendix A, including with funds from other Council sources.

This plan also authorises that unspent monies collected through previous Section 94 or 94A plans are to be expended on works previously identified in the works schedules, or the Work Schedule included as Appendix A of this Plan, to achieve the same or similar outcomes sought by the previous Section 94 or 94A Plans.

Furthermore, where works identified in previous Section 94 or 94A Plans are no longer considered necessary, then this plan authorises that the unspent money be transferred and spent on the works identified in the Works Schedule of this plan.

Money paid to the Council under a condition authorised by this plan is to be applied by the Council towards meeting the cost of the public amenities or services that will be, or have been, provided within the area as listed in the Works Schedule at Appendix A.

12 Condition of Consent

Unless otherwise determined by the Council, the standard condition described in Appendix D will be used on Development Application determinations and Complying Development Certificates for monetary contributions levied under this Plan.

13 Dictionary

In this plan, unless the context or subject matter otherwise indicates or requires, the following definitions apply:

Council	means Nambucca Shire Council
Levy	means a levy under Section 7.12 of the Act authorised by this Plan
Minister	means the Minister administering the Environmental Planning and Assessment Act 1979
Public facility	means a public amenity or public service
The Act	means the Environmental Planning and Assessment Act 1979
Regulation	means the Environmental Planning and Assessment Regulation 2000
CPI	Consumer Price Index

Appendix A – Works Schedule

The table below provides a summary of the works or services for which funds collected under this plan will be used, including an estimate of the annual expenditure under this plan. Funds collected under this plan may provide only a part of the cost of works, infrastructure and services. The table also indicates the priority of their provision, extension or augmentation which may be subject to availability of supplementary funding.

The actual timing of delivery of works is subject to change as it is influenced by the following factors:

- The rate and timing of development from which contributions are collected;
- The pooling of sufficient funds to enable provision, extension or augmentation of amenities and services;
- The requirements of Council's annual Capital Works Program from year to year;
- The relationship between works and other events; and
- Grant funding for projects in the shire.

Location	Works Program	2019-2029 Estimated Annual Expenditure**
Shirewide	Open Space and recreation, parks, playgrounds, streetscape, parking, road and intersection upgrades, bridges, cycleways, footpaths, drainage, cultural facilities, public amenities and public facilities	\$500,000

** comprised of estimated contributions collected under this plan over the life of the plan, and pooled funds collected under plans which have been repealed with the implementation of this plan.

Appendix B - Cost Summary Report and Detailed Cost Report Forms

Procedure

A cost summary report is required to be submitted to allow Council to determine the contribution that will be required. The following should be provided:

- 1 A cost summary report must be completed for works with a value no greater than \$500,000.
- 2 A Quantity Surveyor's Detailed Cost Report must be completed by a registered Quantity Surveyor for works with a value greater than \$500,000.

To avoid doubt, section 25J of the Environmental Planning and Assessment Act 1979 sets out the things that are included in the estimation of the construction costs by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:

- (a) If the development involves the erection of a building, or the carrying out of engineering or construction work – the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation
- (b) If the development includes a change of use of land – the costs of or incidental to doing anything necessary to enable the use of the land to be changed
- (c) if the development involves the subdivision of land – the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.

Cost Summary Report
(Development cost of less than \$500,000)

Development Application No.	
Complying Development Certificate Application No.	
Date	

Applicant's Name	
Applicant's Address	
Development Name	
Development Address	

Estimate Details

Demolition and alternations	\$
Structure	\$
External walls, windows and doors	\$
Internal walls, screens and doors	\$
Wall finishes	
Floor finishes	\$
Ceiling finishes	\$
Fittings and equipment	\$
Hydraulic services	\$
Mechanical services	\$
Fire services	\$
Lift services	\$
External works	\$
External services	\$
Other related work	\$
Sub-total	\$
Preliminaries and margin	\$
Sub-total	\$
Consultant fees	\$
Other related development costs	\$
Sub-total	\$
Goods and Services Tax	\$
TOTAL DEVELOPMENT COST	\$

I certify that I have:

- Inspected the plans the subject of the application for development consent or construction certificate.
- Calculated the development costs in accordance with the definition of development costs in clause 25J of the Environmental Planning and Assessment Regulation at current prices.
- Included GST in the calculation of development cost.

Signed: _____

Name: _____

Position and qualifications: _____

Date: _____

Registered* Quantity Survey's Detailed Cost Report
(Development costs in excess of \$500,000)

***Member of the Australian Institute of Quantity Surveyors**

Development Application No.	
Complying Development Certificate Application No.	
Date	

Applicant's Name	
Applicant's Address	
Development Name	
Development Address	

Development Details

Gross Floor Area - Commercial	m ²	Gross Floor Area - Other	m ²
Gross Floor Area - Retail	m ²	Total Gross Floor Area	m ²
Gross Floor Area - Car Parking	m ²	Total Site Area	m ²
Total Development Cost			
Total Construction Cost			
Total GST			

Estimate Details

Professional Fees	\$	Excavation	\$
% of development cost	%		\$/ m ²
% of construction cost	%	Car Park	\$
Demolition and site preparation	\$	Cost per m ² of site area	\$/ m ²
Cost per m ² of site area	\$/ m ²	Cost per space	\$
Construction - Commercial	\$	Fit-out - Commercial	
Cost per m ² of commercial area	\$/ m ²	Cost per m ² of commercial area	\$/ m ²
Construction - Retail	\$	Fit out - Retail	\$
Cost per m ² of retail area	\$/ m ²	Cost per m ² of retail area	\$/ m ²

I certify that I have:

- Inspected the plans the subject of the application for development consent or construction certificate.
- Prepared and attached an elemental estimate generally prepared in accordance with the Australian Cost Management Manuals from the Australian Institute of Quantity Surveyors.
- Calculated the development costs in accordance with the definition of development costs in the S7.12 Development Contributions of Nambucca Council at current prices.
- Included GST in the calculation of the development costs.
- Measured gross floor areas in accordance with the Method of Measurement of Building Area in the AIQS Cost Management Manual Volume 1, Appendix A2.

Signed: _____

Name: _____

Position and qualifications: _____

Date: _____

Appendix C – Determination of proposed cost of development

Clause 25J of the Environmental Planning and Assessment Regulation 2000 (for 25 January 2019)

25J Section 7.12 levy – determination of proposed cost of development

- (1) The proposed cost of carrying out development is to be determined by the consent authority, for the purpose of a section 7.12 levy, by adding up all the costs and expenses that have been or are to be incurred by the applicant in carrying out the development, including the following:
 - (a) if the development involves the erection of a building, or the carrying out of engineering or construction work—the costs of or incidental to erecting the building, or carrying out the work, including the costs (if any) of and incidental to demolition, excavation and site preparation, decontamination or remediation,
 - (b) if the development involves a change of use of land—the costs of or incidental to doing anything necessary to enable the use of the land to be changed,
 - (c) if the development involves the subdivision of land—the costs of or incidental to preparing, executing and registering the plan of subdivision and any related covenants, easements or other rights.
- (2) For the purpose of determining the proposed cost of carrying out development, a consent authority may have regard to an estimate of the proposed cost of carrying out the development prepared by a person, or a person of a class, approved by the consent authority to provide such estimates.
- (3) The following costs and expenses are not to be included in any estimate or determination of the proposed cost of carrying out development:
 - (a) the cost of the land on which the development is to be carried out,
 - (b) the costs of any repairs to any building or works on the land that are to be retained in connection with the development,
 - (c) the costs associated with marketing or financing the development (including interest on any loans),
 - (d) the costs associated with legal work carried out or to be carried out in connection with the development,
 - (e) project management costs associated with the development,
 - (f) the cost of building insurance in respect of the development,
 - (g) the costs of fittings and furnishings, including any refitting or refurbishing, associated with the development (except where the development involves an enlargement, expansion or intensification of a current use of land),
 - (h) the costs of commercial stock inventory,
 - (i) any taxes, levies or charges (other than GST) paid or payable in connection with the development by or under any law,
 - (j) the costs of enabling access by disabled persons in respect of the development,
 - (k) the costs of energy and water efficiency measures associated with the development,
 - (l) the cost of any development that is provided as affordable housing,
 - (m) the costs of any development that is the adaptive reuse of a heritage item.
- (4) The proposed cost of carrying out development may be adjusted before payment, in accordance with a contributions plan, to reflect quarterly or annual variations to readily accessible index figures adopted by the plan (such as a Consumer Price Index) between the date the proposed cost was determined by the consent authority and the date the levy is required to be paid.
- (5) To avoid doubt, nothing in this clause affects the determination of the fee payable for a development application.

Appendix D – Standard Condition of Consent

Pursuant to Section 7.12 of the Environmental Planning and Assessment Act 1979, the monetary contribution set out in the following table is to be paid to Council prior to the issue of a Subdivision Certificate or Construction Certificate. The contribution is current as at the date of this consent and is levied in accordance with the Nambucca Shire Council Section 7.12 Contributions Plan, 2019, adopted on <<insert date>>, which may be viewed during office hours at Council's Administration Centre, 44 Princess Street, Macksville or on Council's website: www.nambucca.nsw.gov.au

The contribution payable will be calculated in accordance with the contributions plan current at the time of payment, and will be adjusted at the time of payment in accordance with the Consumer Price Index (CPI) (All Groups Index for Sydney) published by the Australian Bureau of Statistics (ABS). Contribution amounts will be adjusted by Council each quarter.

Contribution Type	Proposed Cost of Development ¹	Levy Percentage	Total Contribution	Contribution Rate remains current until **
Section 7.12 Contribution				

Notes

- 1 As shown on the Development Application / Construction Certificate Application / Complying Development Certificate Application.

Appendix E – Area to which the Plan applies

NAMBUCCA SHIRE COUNCIL LOCAL GOVERNMENT AREA

