



FORBES SHIRE COUNCIL

Section 7.12

Contributions Plan 2018

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1. Executive summary

1.1 Background

1.2 What are development contributions?

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 Sections 7.11 or 7.12 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 services), or
- In the case of contributions made under a planning agreement prepared in accordance with Sections 93F to 93L of the Act toward public purposes.

The Plan deals with Section 7.12 contributions.

1.3 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 and services to meet the increased demand created by development. Unlike Section 7.11 contributions, there does not have to be a direct nexus between the development being levied under Section 7.12 and the need for the public amenity or service for which the levy is required.

A condition of development consent may be imposed by Council 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 monies collected will assist Council towards 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 1.

1.4 Purpose

The purpose of this Contributions Plan is:

- 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;
- To require a certifying authority (the 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 levy determined in accordance with this Plan;
- To assist the Council to provide public facilities and amenities which are required to maintain and enhance amenity and service delivery within the area;
- To state the purposes for which the levies are required, and
- To provide for the governance of the contributions and their application in accordance with the Act and Regulations.

1.5 Timescales Identified in the Plan

This Plan aims to cater for development to 2026. It is anticipated that the Plan will be reviewed in the intervening period and updated.

Council recognises that demographic change in the existing and new population is driving changes in the demand for public services and amenities, and accordingly this Plan seeks to respond to these future needs.

1.6 Summary of Facilities

This Plan seeks contributions towards to following categories of public services and facilities:

- Roads and related infrastructure.
- Pedestrian and cycling Infrastructure.
- Stormwater Drainage.
- Open Space and Recreation.
- Civic and community facilities.

1.7 Summary of Contribution Rates

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 up to and including \$100,000,	0%
All development valued between \$100,000 to \$200,000	0.5%
All development valued in excess of \$200,000	1.0%

Certain types of development are exempt from a Section 7.12 contribution. Details can be found in Section 3.13.

1.8 Works Schedule

The Works Schedules can be found in Appendix 1 of this Plan.

2. Introduction

2.1 Name of the Plan

This Plan is the Forbes Shire Section 7.12 Contributions Plan 2018.

This Contributions Plan has been prepared in accordance with the Act, the Environmental Planning and Assessment Regulation 2000 (the Regulations), the NSW Department of Planning and Infrastructure's Development Contributions Practice Notes 2005, relevant Ministerial Directions, and NSW Department of Planning and Environment Circulars and Guidelines.

2.2 Commencement of Plan

This Contributions Plan takes effect on 28 May 2018. Rezoning applications (for the purposes of Planning Agreements), development applications and applications for complying development certificates lodged and determined on or after this date will be subject to the provisions of this Plan.

2.2.1 Savings and transitional arrangements

A development application or application for a complying development certificate which has been submitted prior to the adoption of this Plan but not determined shall be determined in accordance with the provisions of the Plan which applied at the date of lodgement.

2.3 Purpose of the Plan

The purpose of this Contributions Plan is:

- 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;
- To require a certifying authority (the 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 levy determined in accordance with this Plan;
- To assist the Council to provide public facilities and amenities which are required to maintain and enhance amenity and service delivery within the area;
- To state the purposes for which the levies are required, and
- To provide for the governance of the contributions and their application in accordance with the Act and Regulations.

2.4 Area to Which the Plan Applies

This Contributions Plan applies to all land within the Forbes Shire Local Government Area (see Appendix 2).

2.5 Types of Development to which this plan applies

This Plan applies to all applications for development consent 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.

2.6 What does Section 7.12 of the Act provide?

Section 7.12 of the Act provides as follows:

7.12. Fixed development consent levies

- A consent authority may impose, as a condition of development consent, a requirement that the applicant pay a levy of the percentage, authorised by a contributions plan, of the proposed cost of carrying out the development.
- A consent authority cannot impose as a condition of the same development consent a condition under this Section as well as a condition under Section 7.11.
- A consent authority cannot impose a condition under this Section in relation to development on land within a special contributions area without the approval of:
 - a) the Minister, or
 - b) a development corporation designated by the Minister to give approvals under this subsection.
- Money required to be paid by a condition imposed under this Section is to be applied towards the provision, extension or augmentation of public amenities or public services (or towards recouping the cost of their provision, extension or augmentation). The application of the money is subject to any relevant provisions of the contributions plan.

- A condition imposed under this Section is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.
- The regulations may make provision for or with respect to levies under this Section, including:
 - a) the means by which the proposed cost of carrying out development is to be estimated or determined, and
 - b) the maximum percentage of a levy.

3. Operation of the Plan

3.1 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.

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

3.2 Calculation of the Contribution

The contribution will be calculated as follows:

Levy payable = %L x \$C

Where

- %L is the levy rate applicable
- \$C is the proposed cost of carrying out the development as certified.

3.3 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 up to and including \$100,000.	0%
All development valued between \$100,000 to \$200,000.	0.5%
All development valued in excess of \$200,000	1.0%

Certain types of development are exempt from a Section 7.12 contribution. Details can be found in Section 3.13.

3.4 Cost Estimate Reports

In order to enable the amount of the contribution to be accurately determined, a cost estimate report must accompany a Development Application or a Complying Development Certificate. The cost estimate report will need to address the requirements of S25J of the Environmental Planning and Assessment Regulation 2000, this has been reproduced below:

- (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.*

Where a cost estimate is not provided Council will estimate the cost of the development using the latest version of Cordell's Cost Guide.

If the quantum of works exceeds \$3,000,000, it must be independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications.

Without limitation to the above, Council may review the valuation or works and may seek the services of an independent person to verify the costs. In these cases, all costs associated with obtaining such advice will be at the expense of the applicant and no construction certificate will be issued until such time that the levy has been paid.

3.5 Complying Development

In accordance with Section 7.11EC(1) of the Act, accredited certifiers must impose a condition on a complying development certificate where a contribution is required in accordance with this Plan. The amount of the contribution is to be determined in accordance with the formulas contained in this Plan (outlined in Section 3.2 and 3.3 of this Plan). It is the responsibility of accredited certifiers to correctly calculate the contribution and apply the Section 7.12 contribution as a condition of consent (if applicable).

3.6 Construction Certificates

In accordance with Clause 146 of the Regulations, 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 a receipt(s) 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 Regulations. 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 by the Council. In such cases the Council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

3.7 Alternatives to payment

Council may accept an offer by the applicant to provide an "in-kind" contribution (i.e. the applicant completes part or all of work/s identified in the plan) or through provision of another material public benefit in lieu of the applicant satisfying its obligations under this plan. The decision to accept such offers is at the sole discretion of the Council.

Council may accept such alternatives when made as an offer as part of a development application.

The applicant may include in the relevant development application or in an application for a modification under Section 96 of the Act, an offer to carry out works or provide a material public benefit towards which the levy is to be applied. The Council will consider the offer as part of its assessment of the development application or as an application for a modification to a development approval under Section 96 of the Act where a levy has been imposed pursuant to this plan. If the Council agrees to the arrangement and grants consent to the application, it will substitute a condition of consent requiring the works to be carried out or the material public benefit to be provided for a condition requiring payment of a levy under Section 7.12.

In assessing the applicant's offer, the Council will have regard to any relevant requirements of the current Practice Note issued by the NSW Government and such other matters as the Council considers relevant in the circumstances of the case including, but not limited to:

- The value of the works to be undertaken is at least equal to the value of the contribution that would otherwise be required under this plan. Council does not issue credits to applicants for works in kind which are provided in excess of the approved condition outside of a standard procedure involving approval by Council, such as staged development; and
- The standard of the works is to Council's full satisfaction and the works are handed over to the Council at completion without restriction of limitation; and
- The provision of the material public benefit will not prejudice the timing or the manner of the provision of public facilities included in the works program.

The value of an offer to provide Works in Kind, or a material public benefit towards which the levy is to be applied, in lieu (in full or in part) of satisfying a condition of consent relating to payment of a Section 7.11/7.12 contribution will be valued utilising the following mechanism:

- Any credit will be calculated based on the actual cost of works or the agreed cost estimate, whichever is the lesser. The agreed cost estimate will be determined by a review of the costs submitted by the applicant via Council's Engineering Services Department (or a Registered Quantity Surveyor at Council's discretion);
- The agreed cost estimate can be amended by submission of a variation request by the applicant which will be reviewed and certified by a registered Quantity Surveyor;
- The actual cost of works is required to be evidenced and verified by a registered Quantity Surveyor;
- The Quantity Surveyor to act on the project will be chosen by Council from a list of 3 recommended by the applicant all of whom are to be members of Panels for The NSW Department of Finance, Services and Innovation or Local Government Procurement; and
- Quantity Surveyor service costs are to be borne by the applicant.

3.7.1 Legal agreements pertaining to works in kind

All offers, should they be accepted, to provide Works In Kind, or a material public benefit towards which the levy is to be applied, in lieu (in full or in part) of satisfying a condition of consent relating to payment of a Section 7.12 contribution will be subject to a legal agreement between Council and the applicant. All agreements will include, but not limited to, the following:

- The works to be undertaken;
- The timing of the works;
- The quality of the works;
- The costs of the works;
- Handover and signoff by Council;
- The applicant's rights and responsibilities, and
- Council's rights and responsibilities.

3.7.2 Planning Agreements

An applicant may offer to enter into a Planning Agreement with the Council in connection with a development application or a rezoning application that is made for the purposes of being able to subsequently make a development application. The applicant's provision under a Planning Agreement may be additional to, or instead of, making contributions under Section 7.12 of the Act.

Provision is made for Planning Agreements under Section 93F of the Act.

Under a Planning Agreement, the applicant may offer to pay money, dedicate land, carry out works, or provide other material public benefits for public purposes.

The offer to enter into a Planning Agreement, together with the draft Agreement, will generally need to accompany the relevant development application or rezoning application. The Council will publicly notify the draft Agreement and explanatory note relating to the draft Agreement along with the relevant application(s) and will consider the Agreement as part of its assessment of the relevant application(s). If the Council agrees to enter into the Agreement, it may impose a condition of development consent requiring the Agreement to be entered into and performed.

Council encourages the use of Planning Agreements, particularly for development:

- For the purposes of a mine or extractive industry and associated infrastructure development, including extensions to existing approved developments; or subdivisions involving 20 or more lots in one or more stages, or
- Intensive livestock agriculture that is valued at or above \$3,000,000.

3.8 Reassessment of Contributions

Council may consider an application for the reassessment of the development monetary contribution payable. This may result in the contribution being reduced, waived or modified.

Where a condition of development consent has already been imposed requiring the payment of a contribution, the applicant will be required to lodge an application to review the consent in accordance with Section 82A of the Act, to reassess the contribution charged.

The request shall be in writing and provide sufficient information to satisfy Council of the inappropriate nature of the contribution and the implications to Council of reducing or waiving the contribution in the particular circumstances.

3.9 Are refunds for payments of levies possible?

For a refund of levy payments to be considered, the applicant/landowner must:

- Submit a written request to Council;
- In the request demonstrate that the development has not been commenced;
- Submit the request for a refund by within the year following payment of the levy;
- Formally surrender the consent that applied the levy.

Part or full refunds may only be provided in circumstances that are considered reasonable and where a formal request has been made.

3.10 Adjusting Contributions at the Time of payment

This Plan authorises Council to undertake these indexed based changes without the necessity of preparing a new or amending contributions plan.

This is to ensure that that the value of contributions is not eroded over time by movements in the Consumer Price Index, land value increases, the capital costs of construction of facilities and administration of the Plan, or through changes in the costs of studies to support the Plan.

Contributions required as a condition of development consent will be adjusted at the time of payment using the following formula.

CP = CDC x Current index

Base index

where:

- CP is the amount of the contribution calculated at the time of payment.
- CDC is the amount of the original contribution as set out in the development consent.
- Current index the Consumer Price Index: All Groups Index for Sydney (as currently available from the Australian Bureau of Statistics at the time of payment).
- Base index is the Consumer Price index: All Groups Index for Sydney which applied at the time of calculation as shown on the development consent.

3.11 Payment of Contributions

The time of payment of contributions shall be as follows:

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

Where an application is dealt with by an Accredited Certifier other than Council, the development consent shall not operate unless and until the amount required by the consent under this Contributions Plan is paid to Council.

The amount of any monetary contribution to be paid will be the contribution payable at the time of consent, and depending upon the time of payment will be subject to reasonable adjustment due to movements in the Consumer Price Index and/or changes to the rates indicated within this Plan (refer to Section 3.10 of this Plan).

3.11.2 Deferred or Periodic Payments

Council may consider the deferred payment of contributions or payments made by periodic instalments. This will be a merit based decision, considered on a case by case basis and subject to approval by Council.

A request for deferral or periodic payment must be made in writing to Council, stating the proposed length of deferral, and may only be accepted where:

- There are valid reasons for the deferral or periodic payment;
- The deferral will not prejudice the efficiency and operation or cash flows of the Plan;
- The granting of the request for deferred payment will not jeopardise the timely provision of works or land identified within the Plan;
- A suitable bank guarantee (or equivalent security) can be, and is, provided in the event that the request is accepted by Council;
- Where the applicant intends to make a contribution by way of a Planning Agreement, Works in Kind or land dedication in lieu of a cash contribution, and Council and the applicant have a legally binding agreement for the provision of the works or land dedication;
- Residential Incentive Policy; and
- The periodic or deferred contributions are paid, including interest, at no cost to Council.

The conditions under which Council may accept periodic payment for a staged development are:

- That the instalments are paid before the work commences on each relevant stage of the development, and
- The amount to be paid at each stage is to be calculated on a pro-rata basis in proportion to the demand for the relevant facility being levied by the overall development, including CPI if required.

3.12 Goods and Services Tax

Monetary Section 7.12 development contributions are exempt from the Federal Government Goods and Services Tax (GST).

3.13 Exemptions

Under Section 7.11E of the Act a levy under Section 7.12 cannot be imposed on development:

- Where the cost of development is \$100,000 or less;
- For the purpose of disabled access;
- For the sole purpose of affordable housing;
- For the purpose of reducing the consumption of mains-supplied potable water, or reducing the energy consumption of a building;
- For the sole purpose of the adaptive reuse of an item of environmental heritage listed in Schedule 5 of Forbes Local Environmental Plan 2013;
- Where a condition under S7.11 of the Act has been imposed on a previous development consent relating to a subdivision that resulted in the creation of the lot upon which the development is proposed to be carried out. This exemption does not apply to new subdivision developments, and
- Seniors living development under SEPP Seniors Housing 2004 provided by a Social Housing Provider.

3.14 Review of the Plan

This Plan may be reviewed in full, or in part, when considered appropriate having regard to the rate and type of development, cost of facility provision, and community response to service and facility provision.

A complete review of this Plan is anticipated every five (5) years from the date of commencement of the Plan.

3.15 Accountability

Financial management and accountability are important components of Section 7.12, and Council is obliged to maintain an accurate and up to date register of all Section 7.12 contributions. Council is required to comply with a range of financial accountability and public access to information requirements in relation to Section 7.12. These are addressed in Division 5 and 6 of Part 4 of the Regulations and include:

- Maintenance of, and public access to, a contributions register;
- Maintenance of, and public access to, accounting records for contributions received and spent;
- Annual financial reporting of contributions; and
- Public access to contributions plans and supporting documents.

Monetary contributions received under the authority of this Plan must be recorded and kept through a separate account specifically established for this Plan. The records must indicate the contributions received, contributions expended and must include the interest, if any, earned on invested funds for each account. These records are updated on a monthly basis.

Separate accounting records are maintained for all Council's Section 7.11 and Section 7.12 Contribution Plans. Information on Section 7.11 accounts and funds relating to this Plan will be provided in a condensed format within Forbes Shire Council's Annual Report/s in accordance with requirements of the Regulation.

Information is also available in Council's contribution register relating to this Plan, which can be inspected at Council during normal business hours.

3.16 Unspent Section 7.11 Funds

This Plan also authorises that unspent monies collected through the previous Section 7.11 Plan are to be expended on works identified in the Works Schedule included in Appendix 1.

3.17 Application of the Funds

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 1.

3.18 Pooling of Contributions

This Plan expressly authorises monetary Section 7.12 Contributions paid for different purposes to be pooled and applied (progressively or otherwise) for those purposes. The priorities for the expenditure of the contributions are shown in the Works Schedule at Appendix 1.

3.19 Condition of Consent

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

3.20 Procedure for obtaining cost estimates

A Development Application or an application for a Complying Development Certificate for works greater than \$100,000 must be accompanied by a report setting out an estimate of the proposed cost of carrying of the development.

The following should be provided:

- A cost estimate report must be completed for works with a value greater than \$100,000 and no greater than \$3,000,000;
- A Quantity Surveyor's Cost Estimate Report must be completed by a registered Quantity Surveyor for works with a value greater than \$3,000,000, and
- To avoid doubt, Section 25J of the Regs 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:

- 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;
- 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, and
- 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.

The relevant cost estimate report is required to be submitted with a Development Application or Application for a Complying Development Certificate to allow Council, or an Accredited Certifier for Complying Development, to determine the contribution that will be required as a condition of consent.

APPENDIX 1 PROJECTS

CAPITAL WORKS PROGRAM		
Site	Replacement Year	Replacement Cost \$
Ron Flannery Park	2018	\$55,000
Nurse Stokes Park	2018	\$60,000
Footpath capital improvement	2018	\$175,000
Stormwater capital works	2018	\$300,000
Playground replacement	2018	\$55,000
Urban Roads Reseal Program	2018	\$150,000
Kerb and Gutter Replacement	2018	\$150,000
Mary Muir Park	2020	\$40,000
Aquatic Centre	2021	\$50,000
Alma Sharp Park	2022	\$35,000
Lions Park	2023	\$60,000
Rotaract Park	2026	\$150,000

APPENDIX 2 WHERE THE S7.12 CONTRIBUTIONS PLAN APPLIES

