

THE NAMBUCCA SHIRE
COMMUNITY FACILITIES AND OPEN SPACE
DEVELOPER CONTRIBUTION PLAN 2008

Plan Version

Version	Adopted	Commenced	Notes
V.5	16 July 2015	23 July 2015	V.2-V.4 updates were changes to work schedules. This is the first full review of V.1.

Certification

This Contribution Plan, The Nambucca Shire Community Facilities and Open Space Contribution Plan 2015, is authorised under s.94 of the Environmental Planning and Assessment Act and was adopted by the Nambucca Shire Council on 16 July 2015 and commenced on 23 July 2015.

General Manager
Nambucca Shire Council

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PART A

1 INTRODUCTION

1.1 Name of this plan

This s.94 Developer Contribution Plan is prepared in accordance with the provisions of section 94 of the *Environmental Planning and assessment act (1979) (EP&A Act)* and Part 4 of the *Planning and Assessment Regulation (2000) (Regulation)*.

The plan is named the “Nambucca Shire Community Facilities and Open Space Developer Contribution Plan 2015”.

1.2 Commencement of the contribution plan

This contribution plan is prepared pursuant to the provisions of s.94 of the *EP&A Act* and Part 4 of the *Regulation* and is effective from **23 July 2015**.

1.3 What area does this plan apply to?

This plan applies to all land within the Nambucca Shire indicated on the map at Appendix A.

This development contribution plan applies to applications for development consent and applications for complying development certificates under Part 4 of the Act. Contributions do not apply to development for the purposes of a secondary dwelling with a floor area up to and including 60m² (within external walls) for a trial period of 2 years commencing from 23 July 2015

1.4 What is a s.94 contribution plan?

s.94 of the Act authorises Council to levy contributions from developers as a condition of consent for the provision of public infrastructure, facilities and services that are required as a result of increased development. The s.94 plan remains a public document and describes Councils policy on developer contributions.

A s.94 contribution plan details the expected increase in demand as a result of new development and links this to an increased demand for local public services, facilities and infrastructure to be provided through developer contributions. This ‘nexus’ is one of the underlying core principles of s.94 and is the key factor in deciding if a contribution can be sought.

A contribution plan must contain a description of how the contribution rate has been determined, and the formulae for determining the rate; the contribution rates; the works schedule; and timeframe for expenditure and project delivery.

The plan should be flexible, it should be able to respond to the changing needs of an area, and it should allow for the planned, efficient provision of facilities and infrastructure expected to be required as a result of, or to assist, new development.

The plan should operate over a specific period of time, which in this case is 10 years, for determining both the rate of development and the infrastructure, facilities and services to be provided within that period. The plan should be reviewed and amended if necessary at the program’s midpoint (5 years).

Council can only demand a contribution if it is satisfied the development, the subject of the development application, will or is likely to require the provision of or increase the demand for, public facilities within the area. Contributions may be in the form of monetary payments, dedication of land at no cost to council, the provision of a material public benefit, or a combination of these.

The ability to fund new works facilities and the embellishment of existing infrastructure in the community through the use of s.94 contributions is highly important for Nambucca Shire Council. Through the use of developer contributions Council reduces the cost and impact of existing residents in the LGA for the provision of additional services and infrastructure generated by new development. The use of s.94 contributions guarantees the service level for the existing population is maintained while ensuring an equivalent level is provided for the incoming population.

1.5 Purpose of this contribution plan

This plan satisfies the requirements of the EP&A Act and Regulation and authorises Nambucca Shire Council to require payment of a monetary contribution, a dedication of land or in lieu of, to accept the provision of material public benefit, including the dedication of land, or the carrying out of a works in kind agreement, towards provision, extension or augmentation of public facilities, infrastructure and/ or services that will, or are likely to be, required as a consequence of development in the Nambucca Shire.

The purpose of this plan is to:

- Provide the framework for the efficient and equitable determination, collection and management of development contributions towards the provision of public facilities and infrastructure.
- Ensure that all new development that benefits from these public facilities and infrastructure contribute towards their provision.
- Determine the likely development patterns and needs of the population which will result from that development.
- Ensure that the existing Nambucca Shire community is not unreasonably burdened by the provision of public facilities and infrastructure required as a result of the ongoing development and redevelopment undertaken within the Nambucca LGA.
- Provide an overall strategy for the coordinated delivery of public facilities and infrastructure consistent with Council's strategic plan and management plan.
- Provide a comprehensive and transparent strategy which is implemented for the assessment, accounting and review of development contributions made under s.94 of the Act and regulation for the Nambucca LGA.
- Indicate a program of works and capital expenditure for the provision of public works required as a result of development within the LGA.

1.6 Relationship to other plans

This plan is a result of a full review of the *Nambucca Shire Council Community Facilities and Open Space Developer Contribution Plan 2008*.

Contributions raised and paid under the authority of this plan will be directed towards the respective facility and infrastructure described in the work schedule of this plan. This plan incorporates the outstanding fund balance of the plan current at the time of this plan's introduction.

Contributions levied under the plan may be adjusted according to movements in the Consumer Price Index (CPI). This would arise where the timing of the payment of the contribution is at least one (1) year from the date of development consent, which contains the condition imposing the s.94 contribution/s.

1.7 For what facilities and / or infrastructure will contributions be levied?

This contribution plan establishes strategies that allow s.94 contributions to be levied towards the provision of the following categories of facility, infrastructure or service provided these relate to the need generated through increased development demands:

- **Community Facilities**
- **Open Space**
- **Community Facilities and Public Open Space Strategy 2015**

1.8 Contribution plan structure

The contribution plan is structured in four (4) parts:

Part A: details essential components of the plan, including the basis for preparing a development contribution plan, describes the plan's operation and administration, defines the area affected by the plan and its relationship to other plans.

Part B: provides details of the need for public facilities planned to be provided, including the expected development and population characteristics of the Nambucca Shire and the plan for the delivery of required facilities and infrastructure.

Part C: provides details on the strategies to deliver each of the categories of facilities and infrastructure, including the causal, spatial and temporal link between the expected development and the facilities required, and the philosophy, standards and manner of facility and service delivery.

References and Appendices

2 ADMINISTRATION AND OPERATION OF THE PLAN

2.1 Operation of the plan

Section 94 permits Council to require developers to provide or assist in the provision of new facilities and infrastructure required as a result of new development. The mechanism to require the contribution is through the development assessment process.

In determining a development application or issuing a complying development certificate, Council may impose a condition of consent requiring the payment of a monetary contribution, dedication of land and / or works in kind, in accordance with the provisions of the plan.

This plan identifies the quantum of contribution to be levied on an individual development, and what facilities and infrastructure the contribution may be directed towards. Such details are to be included in the respective development approval. The parameters and assumptions used to identify contributions and the works as a result of development occurring are dynamic. As a result this plan will be reviewed periodically.

Information on the contributions received, and details of how these contributions have been applied towards the provision of the public amenities and services described in this plan, will be reported in Council's annual financial statements. A register of contributions received under this plan will also be maintained and made publicly available by Council.

2.2 What is the life of this plan?

This plan seeks development contributions for facilities and infrastructure required as a result of population increases occurring over the next ten (10) year period. The time frame selected accords with the estimated rates of development and population projections completed to identify growth from 2014.

2.3 What is the contribution formula?

The formula used to determine the contributions regarding each type of facility and service are set out in Part C of this Plan. The formulas have been based on a generic contribution formula that applies to each facility or infrastructure item.

The contribution rate will be indexed according to the CPI set out in section 2.10. A summary of the contribution rate is provided. The contribution rates for residential development are calculated per person, and then converted to a per dwelling bedroom occupancy or where applicable per new lot.

2.4 When are contributions payable?

The amount of developer contributions will be determined as a part of the assessment of a development application and will appear as a condition of approval on the respective development consent issued under section 80 of the EP&A Act. The notice will include a condition indicating the timing, amount of payment and the public amenity or service in respect of which a condition is imposed.

The provision of material public benefits or works in kind, or payment of a monetary contribution is to be made prior to the issue of a construction certificate. In the case of subdivision, the contribution is to be made prior to the issue of the subdivision certificate. Where a developer negotiates a material public benefit or works in kind in lieu of paying a monetary contribution required under this Plan, the developer must also pay Council's reasonable costs for the management of this contribution plan.

The amount of monetary contribution to be paid will be the contribution payable at the time of consent, and depending on when the development consent is acted upon, may be subject to reasonable adjustment due to movements in the financial indices and rates in section 2.10.

2.5 Are contributions payable for complying development?

It is the responsibility of the principal certifying authority to accurately calculate and apply the s.94 contribution conditions where applicable. It is the responsibility of any person issuing a construction certificate to certify that the contributions have been paid to Council prior to the issue of the certificate. Deferred payments of contributions required by a condition of complying development certificate will not be accepted.

The provision of material public benefits, works in kind or payment of a monetary contribution is to be made prior to the issue of the construction certificate. In the case of subdivision, the contribution is to be made prior to the issue of a subdivision certificate.

Where a developer negotiates a material public benefit or works in kind in lieu of paying the monetary contribution required under this plan, the developer must also pay Council's reasonable costs for the management of this contributions Plan.

2.6 Offer to enter into a voluntary planning agreement

If an applicant does not wish to pay a levy in connection with the carrying out of a development, the applicant may offer to enter into a voluntary planning agreement with Council under s.93F of the EP&A Act in connection with making a development application.

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

The applicant's provision under a planning agreement may be additional to or instead of paying a contribution in accordance with a condition of development consent authorised by this Plan. This will be a matter of negotiation with Council.

The offer to enter into the planning agreement together with a copy of the draft agreement should accompany the relevant development application.

Council will publicly notify the draft planning agreement and an explanatory note relating to the draft agreement along with the development application and will consider the agreement as part of its assessment of that application.

If council agrees to enter into the planning agreement, it may impose a condition of development consent under s.93I(3) of the EP&A Act requiring the agreement to be entered into and performed. If Council does not agree to enter into the planning agreement, it may grant consent subject to a condition authorised by this plan requiring the payment of a contribution.

2.7 Works in Kind and Material Public Benefits

Council may allow applicants to make a contribution by way of a material public benefit, (for items NOT included in the Works Schedule) or by works in kind (for items included in the Works Schedule) as referred to in s.94(5) of the Environmental Planning and Assessment Act 1979.

Council may, but is not obliged to, accept material public benefits or works in kind when:

- Agreement is reached between the developer and Council as to the proposed material public benefit or works in kind,
- A monetary contribution in accordance with the Developer Contributions plan is unnecessary or unreasonable in the circumstances,
- The value of the material public benefit or works in kind is at least equal to the value of the monetary contribution assessed in accordance with the plan, and
- The material public benefit of all works in kind will not prejudice the timing or the manner of the provision of the public facility for which the contribution was required.

It may also accept a material public benefit for an item not included on the contribution plan works schedule where it considers the acceptance of that material public benefit will not create an unacceptable shortfall in contributions collected which may lead to difficulty in providing other items on the work schedule.

The offer from an applicant or any other entitled to that consent must be made in writing as part of the development application and include details of the extent and nature of the works proposed to be undertaken.

Council will require the applicant to enter into a written agreement for the provision of the works.

Acceptance of any such alternative is at the sole discretion of Council. Valuation of any land to be dedicated will be obtained by Council at the applicant's expense. The cost of the dedications is to be borne by the applicant. The terms of the offer as accepted by Council will be included in the development consent.

2.8 Dedication of land

Dedication of land in lieu of monetary contributions for community facilities, open space or other infrastructure described in this plan will be considered at the discretion of Council.

Dedication of land will be required on an area basis in accordance with the rates in the plan at the date of dedication. All costs of dedication are to be borne by the applicant, including but not limited to, survey, legal and administration costs.

The land is to be in a condition suitable for its intended purpose cleared of all debris, weeds and waste materials. The land is to have a compliance certificate from a registered testing authority stating that the land is free from contaminated and hazardous materials and substances. Council will not accept dedication of any lands otherwise.

Land to be dedicated is to be shown on the Final Plan of Subdivision that accompanies the Subdivision Certificate application, and come under Council care and control upon registration of the subdivision.

2.9 Monitoring and review of contributions

Nambucca Shire Council acknowledges the need to continually monitor and review this plan. The contribution plan will be subject to review that will account for such matters as community need, provision costs, development rates, contribution affordability and performance of provision of works.

In the event of Council identifying changes as a result of the review process, amendments to the contribution plan, (apart from the periodic adjustment of contributions that is provided for in s.2.10 of this Plan, based on published indices), will be publicly exhibited in accordance with the requirements of the EP&A Regulation 2000.

Pursuant to Cl32(3) of the Regulation 2000, Council may make certain minor adjustments or amendments to the plan without prior public exhibition and adoption by Council.

2.10 Adjustment of contributions

To ensure that the values of the contributions are not eroded over time by movements in the Consumer Price Index (CPI), Council will amend the contribution rates. The contribution rates listed in Part C will be amended annually and increased, or as the case may be, decreased according to the CPI to allow for adjustments in the cost of provision for facilities. Contributions will also be adjusted at the time of payment in accordance with the quarterly CPI.

Contributions required as a condition of development consent will be adjusted at the time of payment in accordance with the latest CPI (All Groups – Sydney) as published quarterly by the Australian Bureau of Statistics (ABS), using the following formula.

$$\text{Contribution at the time of payment} = C \times \frac{\text{CPI 2}}{\text{CPI 1}}$$

Where:

- C = The original contribution amount as shown on the consent.
- CPI 2 = The CPI Number (All Groups – Sydney) currently available from the ABS at the time of payment.
- CPI 1 = The CPI Number (All Groups – Sydney) last published by the ABS at the time of coming into effect of the plan, or subsequent amendment of the plan.

2.11 Accountability

Financial management and accountability are important components of section 94, and Council is obliged to maintain an accurate and up to date register of all section 94 contributions.

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 94 contribution plans. Information on section 94 accounts and funds relating to this plan will be provided in a condensed format within Nambucca Shire Council's

Annual Report/s in accordance with requirements of the EP&A Regulation 2000. Information is also available in Council's contribution register relating to this plan, which can be inspected at Council during normal business hours.

2.12 Deferral of payments

With regard to payment deferrals please refer to Council's current payment deferral policy.

2.13 Pooling of contributions

This plan authorises monetary s.94 contributions paid for different purposes to be pooled and used progressively or otherwise for those purposes, and are described in the works schedule.

2.14 Savings and transitional arrangements

A development application submitted prior to the adoption of this plan but not determined shall be determined in accordance with the provisions of the Plan, which applied the date of determination of the application.

2.15 Staging of infrastructure

Council will only be able to directly provide works and services when sufficient funds have been provided by way of contributions. The works schedules under this plan identify spending priorities for some works. The identified priorities will inform decisions about the order in which works will be delivered and works that may be delivered using pooled funds. Work priorities may be adjusted to account for Council's capacity to carry out works having regard to Council-wide works programs. Similarly some works may be accelerated where there are synergies with other Council works.

PART B

3 COMMUNITY PROFILE

The community profile is prepared to provide a clear understanding of the characteristics of the resident population of the Nambucca Shire and to identify trends. The profile assists in projecting residential population growth and determining what facilities will be required to meet the needs of the population resulting from future development. Data is drawn from the ABS Census data held for 2001, 2006 and 2011 using the Nambucca LGA and postcodes 2441, 2447, 2448 and 2449.

3.1 Resident Population

The resident population of the Nambucca Shire has experienced slow growth since 1996. The 2006 Census recorded 17,896 persons across the Shire, an increase of 0.66% between 2001 and 2006. The 2011 Census records 18,644 persons indicating a 4.18% increase since 2006.

Table 1 Population Size and Change Nambucca Shire Local Government Area

Year	Population	Average % Change P.A.
1996	17 567	
2001	17 778	0.17
2006	17 896	0.20
2011	18,644	0.84

3.2 Demographic Characteristics

3.2.1 Age Structure

In the 2011 Census 17.8% of the population usually resident in Nambucca LGA were children aged between 0 – 14 years, compared with NSW's state percentage of 19.2%. Comparatively, a large proportion of the population, 40.72%, was aged 55 years and over, against a State percentage of 26.4%. The median age for persons in the Nambucca Shire was 49 years against a State median of 38 years.

These figures reflect the trend of coastal and near coastal locations as popular retirement destinations, and the relatively low numbers of younger people is complementary to the ageing population trend.

Table 2 Age Structure, Nambucca LGA 2001 – 2011

Age Group	2001 (no.)	2006 (no.)	2011 (no.)	Change 01-11(%)
0-4 years	973	978	1045	7.40
5-9 years	1 247	1 101	1105	-11.39
10-14 years	1 441	1 265	1176	-18.39
15-19 years	1 175	1 126	1110	-5.53
20-24 years	574	652	652	13.59
25-29 years	686	567	656	-4.37
30-34 years	791	737	634	-19.85
35-39 years	1 041	868	913	-12.30
40-44 years	1 347	1 154	959	-28.80
45-49 years	1 298	1 427	1229	-5.32
50-54 years	1 216	1 353	1567	28.87
55-59 years	1 069	1 389	1505	40.79
60-64 years	1 077	1 229	1543	43.27
65-69 years	990	1 134	1354	36.77
70-74 years	1 039	932	1089	4.81
75-79 years	865	883	821	-5.09
80-84 years	482	653	658	36.51
85 years and over	351	448	626	78.35
Total	17 662	17 896	18 644	1.79

3.2.2 Household type

Family households (65.6%) and lone person households (31.3%) in 2011 comprised a large proportion of the households in the Nambucca LGA. This is lower than the NSW average where family households account for 71.9%. Lone person households are higher than the State average of 24.2%. Single parent families comprise 19.4% of families (State 16.3%).

3.2.3 Ethnicity

In the 2011 Census, 85.1% of persons resident in the Nambucca LGA stated they were born in Australia, significantly higher than the State average of 68.6%. Aboriginal and Torres Strait Islanders accounted for 7.3% of the LGA population, higher than the State average of 2.4%.

Of those residents not born in Australia, 6.1% were born in NW Europe, 1.4% from Oceania and the remaining 7.4% were born elsewhere.

3.2.4 Income

Nambucca has a broad income distribution, however the trend is towards the lower end of weekly incomes. In 2011 the median personal income was \$377 per week compared to the State's \$561.

In 2011 the median family income in Nambucca LGA was \$853 per week against the State's \$2,120.

3.2.5 Labour force participation

In 2011, 6,749 residents of Nambucca LGA were in the labour force. The unemployment rate for Nambucca LGA in 2011 was 10.7% compared with a State unemployment rate at that time of 5.9%.

The labour force participation rate (LFPR) for Nambucca LGA in 2011 was 44% compared with a NSW LFPR of 59.7%.

3.3 Dwelling and household characteristics

3.3.1 Overview

Future housing development in Nambucca LGA is likely to be of a type that is focused on urban and near urban locations, with significant growth in coastal and near coastal locations.

Near urban or rural residential housing development is expected to remain a significant component of the housing mix, as will a likely trend towards multi-unit housing. However the demand for separate housing on urban residential lots is expected to remain the key housing choice.

3.3.2 Dwelling growth

Table 3 Dwelling Growth (2001-2011)

Dwelling Type	2001	2006	2011	% change 01-06	% change 06-11
Detached House	5 932	6 187	6553	4.2%	5.5%
Semi, row, terrace, etc	195	263	348	34.87%	24.4%
Flat, unit, apartment.	554	608	569	9.74%	-6.8%
Other Dwelling					
Caravan, cabin, houseboat	446	463	239	3.8%	-93%
Improvised home, tent, sleep out	8	23	7	65.22%	-228%
House or flat attached to shop, offic	39	32	56	-17.94%	42%
<i>Total Other Dwelling</i>	<i>493</i>	<i>518</i>	<i>302</i>	<i>5.07%</i>	<i>-71.5%</i>
Dwelling structure not stated	80	11	0	-86.25%	
Total Occupied Private Dwellings	7 254	7 587	7992	4.6%	5%

The key trends over the period 2001 – 2011 as indicated in Table 2 are:

- Over the 10 years 2001 – 2011 the total number of occupied dwellings in the Nambucca LGA increased by 9.6% or 738 dwellings.
- Development of detached houses, flats, units and apartments has grown significantly in the period 2001-2011.
- It is assumed that the decrease in units between 2006 and 2011 period is largely due to a change in data collection methods.

3.3.3 Dwelling type

In 2011 detached housing comprised 86% of the Nambucca LGA private occupied housing stock. Medium density type housing, semi-detached, units and apartments, made up 11.6% of the stock, and the remaining 2.4% other housing types.

From the data available the ratio of dwelling types across the LGA has remained stable over the period 2006-2011.

3.3.4 Tenure

In 2011 44.8% of Nambucca LGA dwellings were fully owned, with a further 24.4% being purchased. This compared with figures for New South Wales where overall 33.2% of dwellings were fully owned and a further 33.4% were being purchased.

In 2011 in the Nambucca LGA 26.6% of dwellings were subject to rental agreements compared to the State figure of 30.1% for the same period

3.3.5 Occupancy rates

Table 4 Occupancy rates (No. bedrooms per dwelling type: 2011 Census)

Number of bedrooms	1	2	3
Detached housing	1.3	1.6	2.4
Semi-detached, row or townhouse	1.0	1.5	2.0
Flat Unit or apartment	1.2	1.5	2.2

The household occupancy rate for the Nambucca LGA in 2011 was 2.3 persons compared with a State and national average of 2.6 persons. The average for persons per dwelling, based on the number of bedrooms, is detailed in Table 3 above.

3.3.6 Commenced residential dwellings

Table 5 Occupation certificates issued for residential dwellings 2006 – 2013 in Nambucca Shire

Year	2006	2007	2008	2009	2010	2011	2012	2013	Total
Number	127	61	121	94	69	74	65	42	653

Table 5 details the rate of occupation certificates issued for residential dwellings in the Nambucca LGA for the period 2006-2013. The total occupation certificates issued during that period equals 653 dwellings and represents 93 dwellings per year.

3.3.7 Summary of key trends

From analysis of available data provided through the Australian Bureau of Statistics (ABS) and other sources emerging trends in the demographics of the Nambucca LGA can be revealed which will assist in the planning and delivery of new community facilities and infrastructure to meet increased population demand.

Key characteristics of the Nambucca LGA are:

- A higher than average unemployment rate coupled with a lower labour force participation rate.
- A net decline in the age groups 0 – 44 years. The two age groups with the highest growth in the LGA are those in the 60 – 54 age group, and those aged over 85.
- A low income population.
- Low dwelling densities.
- Lower than average occupancy rates for dwellings.
- A high proportion of fully owned dwellings.

In common with other coastal LGAs Nambucca LGA is experiencing an ageing population however unlike other equivalent areas it is coupled with a declining birth rate and outward migration of persons aged 20-49 years. The ageing population has effects on the planning and provision of future open space and community facilities.

4 POPULATION PROJECTIONS AND FACILITY DEMAND

This section provides detail on the future resident population of the Nambucca LGA across new residential release areas, established urban and villages and rural. It reviews the anticipated rate and type of residential development likely to occur over the next 20 years, and the expected demand for community facilities and open space.

4.1 Residential development in Nambucca Shire

Patterns of settlement across the LGA have traditionally supported lower density detached residential housing on larger blocks. Established urban areas, such as the townships of Macksville and Nambucca Heads, have attracted incremental growth within the township centres, and on the edges, through the subdivision of small rural land parcels and or larger lots residential lots. Targeted new release areas have provided a significant supply of new residential land since 1988.

Table 6 Population Projections Nambucca Shire 2006 – 2031

Year	Population	Av Annual Growth (%)	Population Projection	Projected Annual Growth (%)
	ABS Census	ABS Census	NSC 2015	NSC 2015
2006	17896			
2011	18644	0.83%		
2016			20466	1.9%
2021			21436	0.94%
2026			22406	0.91%
2031			23376	0.86%

4.2 Population projections and expected development trends

Based on data available from the ABS (Census 2006 and 2011) and on Nambucca Shire Council residential development trends over the past five years, it is expected that the population of the Nambucca LGA will increase from 18,644 persons (2011) to 23,376 persons by 2031, indicating a net growth of 4,732 persons.

It is expected that most of this growth will occur in or near established urban centres and is more likely to be greater towards the coast. Generally the population growth is not expected to be evenly distributed.

The freestanding detached dwelling is expected to remain the preferred choice of housing stock, however medium density housing such as apartments and villa type development may become more popular as the community ages and mature aged couples without children choose to downsize their dwellings.

PART C STRATEGY

5 COMMUNITY FACILITIES

5.1 Definition of community facilities and infrastructure

Community facilities and infrastructure as defined in this contribution plan and the provision of which is supported by Legislation includes:

- (a) Local parks
- (b) Local sporting and recreational facilities
- (c) Cultural, civic and social service facilities
- (d) Land required for (a) to (c) above

Local parks

Local parks are defined as being located within urban residential precincts and provide passive recreation at a neighbourhood level. They are designed to provide a well-managed informal recreational open space within an attractive setting. Local parks have an important role in the conservation and protection of local biodiversity and the provision of interconnected corridors.

Local parks should provide an area of not less than 0.25ha.

Park facilities and improvements can include:

- Connecting pathways
- Shade plantings
- Play equipment
- Park furniture
- Ground plane material – turf, mulch, paving
- Signage
- Perimeter fencing
- Conservation/protection/restoration of biodiversity
- Ball play area
- Canine off leash area
- Water connection
- Sewerage connection

Local sporting and recreational facilities

Includes sportsgrounds and associated facilities to service local community sporting demand

Facilities to be provided can include:

- Double playing fields to provide for AFL, league, union or football overlay in winter, and cricket overlay in summer
- Amenities building (300sq.m)
- Car park and access road (40 spaces)
- Perimeter fence
- Shade tree planting and general landscape improvement

Cultural, civic and social service facilities

Includes the provision of neighbourhood or community centres, local library or combination facility to service new local demand. Other infrastructure that meets this definition includes dual use off road pathways for cyclists, pedestrians and the disabled or aged.

5.2 Community infrastructure existing provision

The Nambucca LGA has experienced a mean growth in new dwellings of 17.8% in the 10 years from 2001 to 2011. The highest levels of new residential growth have been concentrated in existing core urban and near urban areas within the valley and coastal precincts.

The Community Facilities and Public Open Space Strategy 2015, adopted by Council in February 2015, confirms that the current community facilities and public open space areas in the Nambucca LGA are adequate in number to meet the existing and future demands of Shire residents, however the quality and functionality of some of these facilities must be improved. The focus in future should be on ensuring these facilities continue to meet the requirements of Shire residents.

5.3 Nexus and future demand

Community facilities

The CFPOS Strategy 2015 identifies the following key community needs:

- Need to cater for older and ageing adults through lower impact activity opportunities and community facilities (libraries, community centres)
- Need for activity opportunities for youth including programs and improved and accessible skate facilities.
- Development of quality recreation destinations in the Council's key parks in the main towns.
- Improvements to sportsgrounds, particularly buildings and lighting.
- Need for indoor facilities for sport and fitness
- Improvement in quality of existing facilities with a particular focus on Nambucca Entertainment Centre and rural halls.
- High need for further enhancing the libraries, including toilet facilities and storage areas.
- Need for improvements to cultural buildings such as museums and the Nambucca Entertainment Centre and equipment.
- Heating of Macksville Aquatic Centre pool and supporting aquatic activities in natural waters such as river and ocean.
- Need for toilets to be improved in quality, particularly at Gordon Park and Bellwood Park and disabled access.

Local sporting facilities continue to attract significant support from the community. A supply analysis done as part of the CFPOS Strategy identifies that there may be a need for one or two additional rugby code fields in the future, and there is a significant undersupply soccer pitches, and up to six senior size soccer pitches could be required. The other findings are:

- The provision of skate parks is adequate, however the quality of the parks, with the exception of Nambucca Heads, is substandard.
- A number of playgrounds are small and there is potential to improve the quality and diversity of the playgrounds including the provision of some higher level playgrounds.
- There is a gap in the provision of basketball and dirt jump opportunities for older children and youth.

Open space

The CFPOS Strategy identifies the following gaps/opportunities in relation to open space:

- Sportsground buildings are in need of upgrade and consolidation. A number of buildings are in poor or declining condition.
- Anderson Park and EJ Biffin Field suffer drainage issues.
- There is potential to improve the quality of recreation parks and foreshore areas, including establishing some higher quality destinations, mainly Bellwood Park and Gordon Park, Nambucca Heads; riverside open space and Dawkins Park, Macksville.
- There is potential to create quality natural settings suitable for community use including walking tracks and picnic areas.
- There is potential to further strengthen the walking and cycling connections across the Shire.
- There is potential to strengthen water based activity opportunities linked to the rivers, including through quality boating ramps, canoeing and kayaking launch sites.

5.4 Apportionment

The population of the Shire is expected to grow at a mean annual average rate of 1.2% over the 20 year life of the plan, giving an overall population growth rate of 25% between 2011 and 2031. Considering that the existing population of the Shire will benefit from facility and infrastructure provision provided to meet new demand due to residential development, the apportioned rate, or share, of costs for s.94 contributions is 32%. The rate of apportionment is determined by future population growth at 25% plus 7% variance.

5.5 Contribution catchments

This contribution plan comprises one (1) contribution catchment based on future urban growth. In accordance with the underlying principles of the section 94 legislation the contributions will be used to directly fund community infrastructure projects distributed across the collection catchment.

5.6 Contribution rate

The contribution rate is calculated as follows:

Formula

$$\text{Contribution per Person (\$)} = \frac{\text{TC} \times \text{RA}}{\text{RP}}$$

Where:

TC = total cost of new works minus value of previously collected contributions

RA = the proportion of total cost to be attributed to new development

RP = the increase in Shire residential

$$\text{Contribution per Person (\$)} = \frac{(\$10,911,000 - 480,928) \times 0.32}{4732}$$

$$= \$705.33 \text{ (per person)}$$

Table 7 Summary of contributions (All Residential)

Number Bedrooms	Rate (\$) per Person	1	2	3	New Lot
Occupancy Rate		1.3	1.6	2.4	
Community Infrastructure	\$705.33	\$916.93	\$1128.53	\$1692.79	\$1692.79

5.7 Community Infrastructure Work Schedule

Description/Type	Total Est	% App	Threshold Date
Macksville Skate Park Upgrade Macksville	250,000	75%	2015
Valla Beach Tennis Club Awning Valla Beach	5,000	50%	2015
Community Facilities and Public Open Space Strategy Shire-wide	30,000	100%	2015
Macksville Library extension and pathway Macksville	85,000	32%	2015

Macksville Town Revitalisation Community Facilities – Town Square, River Promenade, Market Square, Cooper Street, River Street, Wallace Street and Lane, Princess Street, Mackay St and Matilda St, Winifred Street, Star, Nambucca and Partridge Streets Macksville	1,188,000	32%	2016
Thistle Park Cricket Ground upgrade Macksville	100,000	32%	Post 2015
Bellwood Park playground and amenities upgrade Nambucca Heads	200,000	32%	Post 2015
Amenities at community facility sites: Valla Beach, Nambucca Headland, V-Wall, Main Beach, Shelly Beach, Gordon Park Nambucca Heads	525,000	32%	Post 2015
Nambucca Entertainment Centre Roof Replacement, internal renovation including kitchen, flooring Nambucca Heads	510,000	32%	Post 2015
Valla Beach Footbridge Valla Beach	400,000	32%	Post 2015
Hyland Park Footbridge	140,000	32%	Post 2016
Regional boating facilities at Shelly Beach and Gordon Park, Nambucca Heads	848,000	32%	Post 2017
EJ Biffin Reserve - Drainage, field reconfiguration, shade shelter, lighting, amenities building expansion and upgrade Nambucca Heads	940,000	32%	Post 2018
Coronation Park – Lighting and Building Consolidation/Refit Nambucca Heads	390,000	32%	Post 2018
Hennessey/Tape Oval – Redesign building to provide club facilities and establish two multi-use courts. Bowraville	240,000	32%	Post 2018

Macksville Fun and Fitness Precinct – new club/amenity and innovative playground Macksville	2,060,000	32%	Post 2018
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Total	7,911,000		
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5.8 Community Infrastructure (Cycle Ways) Work Schedule

Description/Type	Total Est	% App	Threshold Date
Nambucca Heads to Macksville Florence Wilmot Drive to Macksville via Nursery Road and Bellvue Drive	3,000,000	32%	Post 2015
Total	3,000,000		

References

Census Data 1996; 2001; 2006; 2011 Australian Bureau of Statistics, Canberra
Community Facilities and Public Open Space Needs Strategy, Suter Planning, South Australia, 2015
Mid North Coast Regional Strategy, Department of Planning, New South Wales. 2006
Nambucca Shire Cycleway Plan (DRAFT). Nambucca Shire Council, New South Wales. 2010

Appendix 1

Example Works in Kind Agreement

The Council of the Shire of Nambucca
("the Council")

and

[insert name of Developer]
(the Developer)

Works in Kind Agreement

Authorised under section 94 of the Environmental Planning and Assessment Act 1979

WIKA

Reg

No:

This Works in Kind Agreement (the Deed) is made on

Between the **Council of the Shire of Nambucca**, Administration Centre, Princess Street, Nambucca in the State of New South Wales ("the Council") of the first part.

And

(insert Developer)

Recitals

A. In this Deed the following words and expressions have meanings assigned to them except where the context otherwise requires:-

Reference to the "**Council**" includes a reference to its servants, agents, employees and sub contractors.

"**Act**" means the Environmental Planning and Assessment Act 1979 and amendments

"**Completion Date**" means the date specified in Schedule D of this Agreement

"**Contribution**" means the amount set out in the Conditions of Development Consent, as indexed from time to time, the payment of which has been imposed by the Council under section 80A(i) and section 94 of the Act.

"**Practical Completion Date**" means the date on which the Council advises the Developer in writing that the Works have been completed to Councils satisfaction.

"**Development Application**" means the development application(s) under section 78A of the Act lodged by the Developer with the Council and described in Schedule A

"**Development Consent**" means the development consent(s) determined by the Council under the Act to the Development Application(s)

"**CPI**" means the Consumer Price Index All Groups Sydney as published on a quarterly basis by the Australian Bureau of Statistics

"**Plans**" means approved engineering and/or other plans for the works described in Schedule C

“The Site” means the land described in Schedule B being the land upon which the works will be undertaken

“the Works” means the whole of the activity described in Schedule C to be executed by the Developer upon the Site in accordance with this Deed

“Total Value of Works” means the value of the Works to be undertaken under this Deed as set out in Schedule A

Words importing the singular include the plural and vice versa.

Words importing any gender include any other gender.

Schedules attached to this Deed form part of the Deed.

- B. (a) The Council has received from the Developer the Development Application
- (b) The Council has resolved to grant the Development Consent to the Development Application subject to a number of conditions being met including conditions for payment of the Contribution.
- C. The Developer has offered under section 94 of the Act to provide the Works as a material public benefit in satisfaction of the conditions of Development Consent which require payment of a contribution and the Council has agreed to accept the carrying out of these works as a material public benefit in satisfaction of the conditions requiring payment of the Contribution upon and subject to the Developer complying with the terms, covenants and conditions contained in the Deed.

OPERATIVE PROVISIONS

1 Developer to Carry out Works

- (a) The Developer must immediately after execution of these documents and without delay and at no cost to the Council commence, carry out and complete the Works on the Site in a good and workmanlike manner, and to the satisfaction of Council.
- (b) The Developer must commence work on the Site forthwith and must proceed with and complete the Works in accordance with this Deed and the Plan/s
- (c) The Developer must complete the Works on or before the Completion Date or within any extension of time granted, or agreed to by Council in writing.
- (d) The Developer must lodge a Bond or Guarantee to the amount equal to the Total Value of Works described in the Deed, prior to the Execution of this Deed. The provisions of Schedule E apply to any such Bond or Guarantee.

2 Failure to Carry out Works

If the Developer fails to complete the Works by the Completion Date or within any extended time granted or agreed to by the Council in writing then:

- (a) The Council shall be entitled, without prejudice to any other rights whatsoever it may have, to delay release of any Plan, approval, consent authority or license to which the Developer may otherwise be entitled, pending completion of the Works.
- (b) The Council shall be entitled to call up the Bond or Guarantee lodged under Clause 1(d), to enable Council to complete and/or rectify the Works.
- (c) Should the amount of the Bond or Guarantee lodged under Clause 1(d) be insufficient to complete and/or rectify the Works, then the Council may claim the cost of completing the Works (as assessed in a fair and reasonable manner having regard for the status and condition of the Works thus far completed, by the Council and notified in writing to the Developer) as a debt in any court of competent jurisdiction. The cost is to be assessed as at the time of the completion and/or rectification works are carried out.

3 Reduction and/or Variation to the Contribution

- (a) Upon the Practical Completion Date the Council will reduce the Contribution payable by the Developer pursuant to the Development Consent by the Total value of Works which has been indexed to the CPI Date which is applicable at the Date of Execution of this Deed as set out in Schedule A
- (b) If the Contribution, indexed to the Practical Completion Date in accordance with the CPI and IPD, is greater than the Total Value of Works then the balance of the Contribution, indexed in accordance with the CPI to the date of payment must be paid by the Developer.
- (c) Should the final plan(s) of survey indicate any change in the total developable area(s) or should any amendments to the Development Consent(s) result in changes in potential additional population the Council may by notice in writing amend the Section 94 Contribution in accordance with Schedule A. The Developer agrees to accept any amendment so made to the Contribution.

4 Availability of Credit for Works

- (a) Should the Developer request in writing credit for works prior to Practical Completion Date, Council will consider the request subject to the works having been substantially commenced and being confident that the amount of bond or Guarantee required under Clause 1(d) will cover completion and / or rectification of Works.

5 Warranty by Developer

The Developer warrants to the Council:

- (a) That it has negotiated and obtained from the owner of each parcel of land within the Site a right or licence to enter upon that land for the purposes of carrying out the works; and

- (b) That it has negotiated and obtained, or will before commencing the Works negotiate and obtain, from the owners of land adjoining the site their acceptance of and consent to the carrying out of the Works.

6 Protection of Persons and Property

- (a) The developer must ensure that all barricades, guards, fencing, temporary roadways, footpaths, signs, lighting etcetera required by law by any public or other authority and/or is necessary for the protection of the Works or the Site during construction, and/or for the safety and convenience of workers, the general public and others, are erected and maintained until the end of the maintenance period and must remove same on completion of the Works.
- (b) The Developer must avoid obstruction or damage to roadways and footpaths, drains or watercourses and public utility and other services on or near to the Site which are visible, or the location of which can be ascertained by the Developer and must remove at its own cost any obstruction, and make good any damage caused.

7 Indemnity and Insurance

- (a) The Developer agrees to indemnify Council against any claim demands and/or other actions, proceedings, damages or costs whatsoever arising out of the construction of the Works or any part thereof. The Developer hereby warrants that insurances in respect of property damage, public risk, public liability, death or injury to employees have been effected. Insurances must be for the amounts specified in Schedule F and, unless specified elsewhere in this Deed, must be effected with an insurer(s) approved in writing by Council, approval of which shall not be reasonably withheld.
- (b) Whenever requested in writing at any time and from time to time the Developer shall produce evidence to the satisfaction of the Council of the insurances effected and maintained for the purposes of this Deed. If, after being requested in writing by the Council so to do, the Developer fails to produce evidence of compliance with its insurance obligations hereunder or any of them the Council may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and the amounts so paid shall be a debt due from the Developer to the Council which may be deducted or recovered by the Council as it deems appropriate.

8 Care of Works

While the Works are being carried out on the Site the Developer is liable for the care of the Works and all material, construction plant and other things that are brought on to the site by or on behalf of the Developer for the purpose of carrying out the Works. The Developer must at its own cost make good to the satisfaction of the Council any loss of or damage to the Works or to the Site resulting from any cause whatsoever until the Practical Completion Date.

9 Access to Site and Works

Prior to commencement of the Works the Developer must produce evidence satisfactory to the Council that any persons authorised in writing by the Council have access to the Works and the Site for any purpose including completion of the Works (in the event of default), and the examination and testing of any work or materials at any place where any such work is being or is to be carried out or materials are being prepared.

10 Removal of Structures

The Developer is responsible for payment of any compensation which may become payable to the owner of any of the lands forming part of the Site resulting from the demolition removal or re-siting of any structure within the Site.

11 Variation of Works

The Works cannot be varied by the Developer without a written direction from Council which may only be given in the following cases:

- (a) Council may direct the Developer to vary the form, quality or quantity of the Works as detailed in the Plans in one or more of the following ways:
 - (i) Increase, or decrease or omit any part of the Works
 - (ii) Change the character or quality of any material or work
 - (iii) Change levels, lines, positions or dimensions of any part of the Works

The cost of any variations directed under this sub-clause (a) are to be borne by the Developer.

- (b) Council may direct the Developer to undertake works that are in addition to the Works as detailed in the Plans. Such direction shall be given by Council to the Developer in writing.

The cost of any variations directed under this sub-clause (b) are to be borne by Council.

No variation under either clause (a) or (b) above will invalidate this Deed.

12 Supervision

- (a) The Works must be executed in accordance with this Deed and in accordance with any directions of the Council given hereunder. Any direction which may be or is given to the Developer by the Council may be given either orally or in writing. When any such direction is in the first instance given orally the Council shall as soon as practicable after it is so given confirm it in writing addressed to and issued or given to or served upon the Developer. For the purposes of this clause, directions may be given by or on behalf of the Council by the Council's Director of Engineering and Operations or their appointed delegate(s).
- (b) The Developer must appoint a project manager to supervise the Works, such project manager to be approved in writing by the Council prior to his or her appointment (the "Project Manager"). The Project Manager must submit to the Council regular reports on the progress of the Works, such reports to be submitted to Council.

13 Special Conditions

As per Schedule G

14 Defects Liability and Maintenance Period

The Developer must upon the Council's written direction correct all defects, or other faults which may appear within a period of six months from the Practical Completion Date arising out of defective or improper materials or workmanship at its own cost and within such reasonable time as is specified by the Council's direction. In the event of default by the Developer under this clause the Council may recover from the Developer the costs associated therewith as a debt due and payable to the Council.

The Developer is to lodge with Council before the Practical Completion Date a maintenance bond which will be held as surety and the Council is not obliged to certify practical completion until that bond is received. The bond is to be 5% of the agreed value of the Works and will be held for a period of six months from the Practical Completion Date.

Alternatively if the Developer so wishes the bond or guarantee lodged under Clause 1(d) can be held for the duration of the maintenance period.

15 Application Bonds

If:

- (a) the Developer fails to comply with its obligations under clause 1; or
- (b) the Developer fails to comply with its obligations under clause 14

the Council may call in the relevant bond or guarantee and use it to carry out or complete the Works or carry out the maintenance work, as the case may be, and for this purpose the Council may enter upon the Site.

16 Certificate Conclusive

- (a) A certificate signed by the General Manager or his deputy and given to the Developer as to the cost to the Council of carrying out or completing the Works, or of carrying out maintenance work, will be conclusive.
- (b) The cost to the Council will include, but not be limited to:
 - (i) All fees and charges necessarily or reasonably incurred by the Council in order to have relevant work carried out and completed properly and expeditiously.
 - (ii) Without limiting the generality of the preceding paragraph, all legal costs and expenses reasonably incurred by the Council by reason of the Developer's fault, or of the calling in or expenditure of money under the bonds or under this Deed or generally in the carrying out of the Council's powers and duties under this Deed.

17 Service of Documents

Service of any documents or notices hereunder shall be deemed to have been served if sent by prepaid post or left at the address of the party shown in the introduction to this Deed. Any documents sent by prepaid post shall be deemed to have been issued or given to or served upon the party at the time at which it would normally arrive in the ordinary course of post at the address to which it is directed.

18 Assignment

The rights conferred hereunder shall not be assigned or transferred to any other party except with the written consent first obtained from the Council.

19 Documents

The Developer covenants and agrees with Council that it will if so required by Council execute and/or procure the execution of all or any document and do all such other acts, matter and things as may be necessary and proper in order that the provisions of these presents and the creation of any easement or any restriction as to use in conjunction therewith may be carried into effect.

20 Costs

Each party shall pay their own costs of and incidental to this Deed except the Legal Fees of both the Developer and Council which must be paid by the Developer.

In addition to any other amount payable under this Deed, the (Developer) will pay the amount of any tax in the form of a goods and services tax levied in respect of:

- (a) the carrying out of the Works under this Deed; or
- (b) the provision by the (Developer) of any security pursuant to this Deed; or
- (c) any calling up enforcement cancellation or refund or such security.

SIGNED AS A DEED

SIGNED in my presence by Nambucca Shire Council by its
Attorney _____ who is personally known to me.

Signature of Witness

Name of Witness (BLOCK LETTERS)

Address and Occupation of Witness

Nambucca Shire Council by
Its attorney [INSERT NAME]
Pursuant to power of attorney
Registered Book [INSERT REG #].

THE COMMON SEAL of

LIMITED was affixed to this deed in)
Accordance with its Articles of)
Association and in the presence of)

.....
Signature

.....
Date

.....
Witnessed By

.....
Date

SCHEDULE A

DEVELOPMENT APPLICATION DETAILS

File / Determination No: _____

Proposed Development: _____

Description of land to which
Development application relates:

•-----•

The following amounts have been adjusted to the CPI Date applicable at Execution of this Deed.

Applicable CPI Date:

Section 94 Contributions Payable:

(list applicable contribution plans)

Total Value of Works:

Balance of Section 94 Contributions Payable:

The Balance of any Contributions owing by the Developer will be subject to CPI adjustment from the Applicable CPI Date above until the date of their Payment.

SCHEDULE A (Cont'd)

FORMULAE FOR CALCULATION OF VARIATION IN CONTRIBUTIONS

1 **Contributions based on Lots**
Base Contribution Due (\$) = Contribution Rate x Lots

2 **Contributions based on Population**
Base Contribution Due (\$) = Contribution Rate (\$/Person) x
P

Where P = Number of Estimated Eventual Persons in the Catchment Area for the relevant Contributions

SCHEDULE B

SITE DESCRIPTION

Location Plan

Insert Location Map Here

SCHEDULE C

DESCRIPTION OF ACTIVITY

SCHEDULE D

COMPLETION DATE

The last day for completion of the Works described in Schedule C ismonths from the date of execution of this deed.

SCHEDULE E

PROVISIONS APPLICABLE TO BOND OR GUARANTEE - CLAUSE 1(d)

- 1 The bond or guarantee must be expressed to be for the performance by the developer of its obligations under this Deed, and must be in a form reasonably acceptable to the Council.
- 2 The bond or guarantee must be given by:-
 - 2.1 A bank within the meaning of the Banking Act 1959 (Cwth), or a bank constituted by a law of the state of the Commonwealth; or
 - 2.2 A financial institution having a credit rating of not less than A given by Standard and Poor's or of not less than A2 given by Moody's.
- 3 The developer must ensure that the financial institution giving a bond or guarantee maintains a credit rating complying with paragraph 2.2 at all times whilst the bond or guarantee remains in force.
- 4 If the financial institution which has given a bond or guarantee ceases to have a credit rating complying with paragraph 2.2 at any time whilst the bond or guarantee is in force then:-
 - 4.1 The developer must notify the Council forthwith of that fact;
 - 4.2 Whether or not such notification has been given, the developer must within 14 days of being required to do so by the Council lodge with the Council a substitute bond or guarantee complying with the provisions of this clause.
- 5 If the developer fails to comply with a notice given under paragraph 4.2 within the time specified, the developer will be in default under this Deed and the Council will be entitled to call up the bond or guarantee held by it.
- 6 Upon compliance by the developer with a notice under paragraph 4.2, the Council will return the earlier bond or guarantee held by it to the developer.
- 7 The bond or guarantee, or so much of it as has not been applied in accordance with clause 14 of this Deed, will be returned by the Council to the developer at the later of:-
 - 7.1 The practical completion date; and
 - 7.2 The expiration of 6 months from the practical completion date if the bond or guarantee is left with the Council in place of a maintenance bond in accordance with Clause 14 of this Deed.

SCHEDULE F

INSURANCES

Public Liability : \$20,000,000 including Principals Liability.

Workers Compensation : As required by Workers Compensation Act, 1987.

SCHEDULE G

SPECIAL CONDITIONS

- 1 All work to be constructed in accordance with Nambucca Shire Council's Works Specification
- 2 All work to be inspected by Council's Engineering Supervisor

or

delegated officer
- 3 The Works are to be constructed in accordance with plans prepared by:
- 4 A full Works-as-Executed Plan is to be submitted to Council showing the finished levels of all works prior to the finalisation of this Deed.
- 5 The Developer in executing this Deed acknowledges that the Section 94 Contributions credits will not be available until Council has provided written confirmation that Practical Completion of the Works has been achieved.

SCHEDULE H

SCOPE OF WORKS

This schedule will only be used on larger projects where a more detailed description of the works is required.

If the schedule is used then it will be referred to in Schedule C.

Appendix 2

Example Developer Agreement

ATTACHMENT A

PLANNING AGREEMENT

Parties

SHIRE of NAMBUCCA, NEW SOUTH WALES (COUNCIL)

and

of ### (DEVELOPER)

Background

- A. On, ###, the Developer made a Development Application to NAMBUCCA SHIRE COUNCIL for Development Consent to carry out the Development on the Land
- B. That Development application was accompanied by an Offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Infrastructure if that Development consent was granted.

Operative Provisions

Planning agreement under the Act

The parties agree that this Agreement is a planning agreement governed by Subdivision 2 of division 6 of Part 4 of the Act.

Application of this Agreement

This Agreement applies to the Land

Operation of this Agreement

Need to specify:

- Date or trigger whereby the Agreement takes effect
- Date or trigger whereby the Parties must execute the Agreement

Definitions and interpretation

In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW)

Dealing, in relation to the land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land

Development means ###

Development Application retains the same meaning as in the Act

Development Consent retains the same meaning as in the Act

GST has the same meaning as in the GST Law

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cwth) and any other Act or Regulation relating to the imposition or administration of the GST

Land means Lot ## DP##, known as ##

Party means party to this agreement, including their successors and assigns

Public Infrastructure means ##

Regulation means the *Environmental Planning and Assessment Regulation 2000*

In the interpretation of this Agreement, the following provisions will apply, unless the context otherwise requires:

- a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement
- b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney
- c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day
- d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars
- e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision
- f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency
- i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders
- k) References to the word 'include' or 'including' are to be construed without limitation
- l) A reference to this Agreement includes the agreement recorded in this Agreement
- m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party
- n) Any schedules and attachments form part of this Agreement

Development contributions made under this Agreement

This section must detail the exact nature of the contributions to be made under this Agreement; when they are to be made; and the manner in which they are to be made

Application of the development contributions

This section is to detail the times at which; the manner in which; and the public purposes for which, development contributions are to be applied

Application of s94 and s94A of the Act to the Development

7.1 Contributions under S94A are not applicable

7.2 Will s94 contributions apply to this development, and to what extent?

Registration of this Agreement

- 8.1 The Parties shall do all things reasonably necessary to enable Council to obtain registration of this Agreement under s.93H of the Act at the Land and Property Information Division of the Department of Lands (NSW), such that on registration of this Agreement, the Registrar General will have made an entry in the relevant Folio(s) of the Register kept under the Real Property Act 1900 in relation to the Land.

Review of this Agreement

- 9.1 The Parties agree that from time to time it may become necessary to review this Agreement, however any amendment to this Agreement shall only be effective if in writing and signed by all Parties and duly Registered under s.93H of the Act.

Dispute Resolution

- 10.1 If a dispute arises out of or relates to this Agreement, including any dispute as to breach or termination of this Agreement or as to any claim in tort, in equity or under any legislation, a Party cannot commence any Court proceedings relating to the dispute unless that Party has complied with the following clauses except where that party seeks urgent interlocutory relief.
- 10.2 A Party claiming that a dispute has arisen must serve a notice specifying the nature of the dispute.
- 10.3 On receipt of that notice by that other Party, the Parties must endeavour, in good faith to, resolve the dispute using dispute resolution techniques
- 10.4 If the Parties do not reach agreement within seven (7) business days of service of the notice, or any other period agreed to in writing by them as to:
- The dispute resolution technique and procedures to be adopted
 - The timetable for all steps in those procedures; and
 - The selection and compensation of the independent person required for that technique,

Then the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

Enforcement of this Agreement

11.1 How will this Agreement be enforced?

Notices

- 12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- Delivered or posted to that party at its address set out below
 - Faxed to that Party at its fax number set out below
 - Emailed to that party at its email address set out below

Council

Attention: #####

Address: 44 Princess Street
Macksville. 2447

Fax Number: 02 6568 2201

E mail: #####

Developer

Attention: #####
Address: #####
Fax Number: #####
E mail: #####

- 12.2 If a Party gives the other party three (3) business days' notice of a change to its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- If it is delivered, when it is left at the relevant address
 - If it is sent by post, two (2) business days after it was posted
 - If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

Approvals and consent

- 13.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

Assignment and Dealing

- 14.1 Until the Developer has delivered its contribution in accordance with this Agreement, the Developer cannot execute any Dealing without the prior consent of Council
- 14.2 The Council may not refuse consent to any Dealing unless the Dealing is likely to, in the opinion of the General Manager of the Council, prevent, hinder or otherwise present a risk to the timely payment of the contribution

Costs

- 15.1 The Developer will pay all Stamp Duty imposed on this Agreement and the costs of Registering this Agreement.
- 15.2 In all other respects, each Party must bear its own costs

Entire Agreement

- 16.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document or anything said or done by another Party, or by a director, officer, employee or agent of that Party, before this Agreement was executed, except as permitted by law

Further Acts

- 17.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it

Governing law and jurisdiction

- 18.1 This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis

Joint and individual liability and benefits

- 19.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two (2) or more persons binds them jointly and each of them individually, and any benefit in favour of two (2) or more persons is for the benefit of them jointly and each of them individually.

No fetter

- 20.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

Representations and warranties

- 21.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

Severability

- 22.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of clause is to be treated as removed from this Agreement, but the rest of this Agreement is unaffected.

Modification

- 23.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

Waiver

- 24.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

GST

- 25.1 If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount to the GST on that supply.

Execution

Dated: ####

Executed as an Agreement: ####

SIGNED AS AN AGREEMENT

THE COMMON SEAL OF COUNCIL OF)
NAMBUCCA SHIRE is hereunto affixed)
pursuant to resolution made on

.....
GENERAL MANAGER

.....
MAYOR

Executed by #### (The Developer)
Under Section 127(1) of the Corporations Act 2001
by being signed by:

.....
DIRECTOR

.....
SECRETARY

.....
NAME

.....
NAME

ATTACHMENT B

Environmental Planning and Assessment Regulation 2000

Clause 25E

Explanatory Note

Draft Planning Agreement

Under s.93F of the Environmental Planning and Assessment Act 1979

1. Parties

Nambucca Shire Council, (the Planning Authority)

(the Developer)

2. Description of Subject Land

####

3. Description of Development Application

####

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

####

5. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes served by the Draft Planning Agreement

#####

How the Draft Planning Agreement Promotes the Objectives of the Environmental Planning and Assessment Act 1979

####

How the Draft Planning Agreement Promotes the Public Interest

####

How the Draft Planning Agreement Promotes the Elements of Councils Charter

#####

How the Draft Planning Agreement conforms with Council's Capital Works Program

####

Impact of the Draft Planning Agreement on the Public, or any section of the Public

####

6. Other Matters

####

SIGNED

THE COMMON SEAL OF COUNCIL OF)
NAMBUCCA SHIRE is hereunto affixed)
pursuant to resolution made on

.....
GENERAL MANAGER

.....
MAYOR

.....
DATE

Executed by #### (The Developer)
Under Section 127(1) of the Corporations Act 2001
by being signed by:

.....
DIRECTOR

.....
SECRETARY

.....
NAME

.....
NAME

.....
DATE

ATTACHMENT C

CONDITION OF DEVELOPMENT CONSENT

Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, the planning agreement that relates to the development application the subject of this consent must be entered into before #####