

Orange Car Parking Development Contributions Plan 2015

Adopted by Orange City Council 3 November 2015

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ORANGE
CITY COUNCIL



Orange Car Parking Development Contributions Plan 2015

Prepared for

Orange City Council

By



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1. Plan summary

1.1 Overview of Plan

The Orange Car Parking Development Contributions Plan 2015 (the **Plan**) has been prepared to address anticipated demand for car parking in the Orange CBD that arises from developments that do not provide sufficient on-site car parking.

All development approved in the Orange CBD is required to make adequate arrangements for vehicular access and parking related to the development. New development proposals may affect the demand for parking, the supply of parking, or both. In approving a development application, Council may impose conditions on the development consent requiring the equilibrium in car parking demand and supply to be maintained.

This Plan authorises the Orange City Council (**Council**) or an Accredited Certifier as consent authorities for development situated in the area shown in **Figure 1** to impose a condition under section 94 of the Environmental Planning and Assessment Act 1979 (the **EP&A Act**) requiring the developer to make a cash contribution toward the provision of car parking in lieu of its actual provision on the development site.

This Plan has been prepared in accordance with the requirements of the EP&A Act and the Environmental Planning and Assessment Regulation 2000. In preparing the Plan Council has had regard to practice notes issued by the NSW Department of Planning and Environment in accordance with clause 26(1) of the EP&A Regulation.

1.2 Contribution rates

The contribution rates are as follows

- (a) \$13,718 per deficient car parking space for all developments that involve the creation of net additional gross floor area on the development site.
- (b) \$6,859 per deficient car parking space for all developments that involve a change of use of the existing building and will not result in the creation of net additional gross floor area on the development site.

Contribution rate (b) reflects a resolution of the Council dated 6 November 2014.

The contribution rates will be regularly adjusted for inflation in accordance with the provisions of Section 2.11 of this Plan. Applicants should inquire at the Council for information on the latest contribution rates.

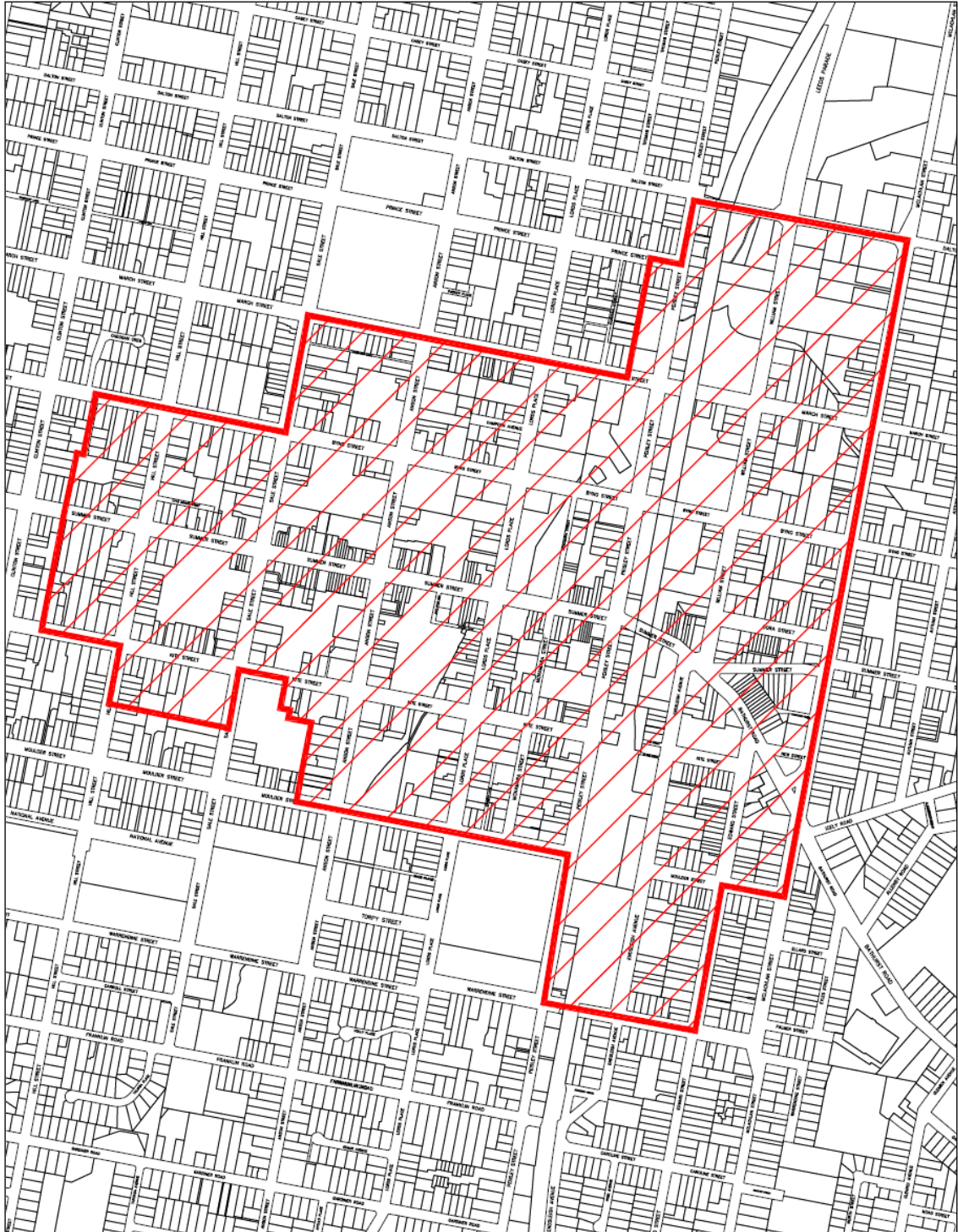


Figure 1: Car parking contributions catchment

2. Administration and operation of this Plan

2.1 Definitions

In this Plan, the following words and phrases have the following meanings:

Accredited Certifier has the same meaning as in the EP&A Act.

Apportionment means the process by which the assessed demand or cost is related specifically to the development from which contributions may be sought. Apportionment seeks to ensure that new development only pays its share or portion of the cost of the facility or work for which it has created a demand.

Attributable Cost means the estimated cost for each item in the works schedules set out in Section 4 of this Plan, which may differ from the final actual cost of the item. It will be the value used in determining the amount of any offset of monetary contributions related to any works-in-kind proposal.

CBD means central business district.

Complying Development Certificate has the same meaning as in the EP&A Act.

CPI means the Consumer Price Index (All Groups - Sydney) published by the Australia Statistician.

Council means Orange City Council.

Development Consent means consent under Part 4 of the EP&A Act to carry out development and includes, unless expressly excluded, a Complying Development Certificate.

Development Contribution means the making of a monetary contribution, dedication of land or the providing of a Material Public Benefit as works in kind, or any combination of the above as referred to in the EP&A Act for the provision of public or Local Infrastructure.

EP&A Act means the Environmental Planning and Assessment Act 1979.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2000*.

LGA means Local Government Area.

Material Public Benefit means something provided by a person entitled to act on a Development Consent, other than the dedication of land or the payment of a monetary contribution.

Plan means this contributions plan.

Planning Agreement means a Planning Agreement referred to in Section 93F of the EP&A Act.

Work in kind means the undertaking of a work or provision of a facility by an applicant which is already nominated in the works schedule of a contributions plan.

2.2 Name of this Plan

This contributions plan is called the Orange Car Parking Development Contributions Plan 2015.

2.3 Purpose of this Plan

The primary purpose of the Plan is to authorise:

- the Council, when granting consent to an application to carry out development to which this Plan applies; or
- an Accredited Certifier, when issuing a Complying Development Certificate for development to which this Plan applies,

to require a section 94 contribution to be made towards:

- the provision, extension or augmentation of public car parking facilities only where development is likely to require the provision of or increase the demand for those facilities; and
- the recoupment of the cost of providing existing public car parking facilities within the area to which this Plan applies.

Other purposes of the Plan are:

- to provide the framework for the efficient and equitable determination, collection and management of Development Contributions toward the provision of public car parking facilities generated by development in and adjacent to the Orange CBD;
- to ensure that the existing community is not unreasonably burdened by the provision of public infrastructure required (either partly or fully) as a result of development in the area; and
- to ensure Council's management of Development Contributions complies with relevant legislation and practice notes, and achieves best practice in plan format and management.

2.4 Commencement of this Plan

This Plan commences on the date on which public notice was published, pursuant to clause 31(4) of the EP&A Regulation.

2.5 Land to which this Plan applies

This Plan applies to the land shown hatched in **Figure 1** of this Plan.

2.6 Development to which this Plan applies

This Plan applies to development that generates car parking needs that are not satisfied through the car parking provide or to be provided on the development site.

This Plan does not apply to Residential Accommodation development, as defined in the Orange Local Environmental Plan 2012.

2.7 Relationship to other plans and policies

This Plan does not affect the operation of any other contributions plan that has been adopted by the Council and is in force.

2.8 Contributions may be required as a condition of consent

This Plan authorises Council or an Accredited Certifier, when determining an application for development or an application for a Complying Development Certificate relating to development to which this Plan applies, and subject to other provisions of this Plan, to impose a condition requiring a section 94 monetary contribution on that development to enable the provision of public car parking identified in this Plan.

This Plan also authorises the Council or an Accredited Certifier to require monetary contributions from development towards recouping the cost of the provision of existing public car parking that has been provided by the Council for or to facilitate the carrying out of development and which the development will benefit from.

2.9 Other contributions to be taken into account

Council, in proposing to impose a requirement for a Local Infrastructure contribution, will take into consideration any land, money or other Material Public Benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than:

- a benefit provided as a condition of the grant of Development Consent under the EP&A Act, or
- a benefit excluded from consideration by a Planning Agreement.

In order for Council to consider the previous benefits made by the applicant, details must be submitted at the time of the development application.

A reduction in the contribution requirement under this Plan may be considered where it can be demonstrated by the applicant that:

- the land, money or other Material Public Benefit previously provided continues to provide an ongoing benefit to the community;
- the benefit was not required to be provided under a condition of consent or under a Planning Agreement;
- the benefit offsets some of the need for facilities identified in this Plan;
- whether the works schedule included this Plan would require amendment; and
- the financial implications for cash flow and the continued implementation of the works schedule included in this Plan (including whether the Council would need make up for any shortfall in contributions by its agreement to reduce the contribution).

2.10 Obligations of Accredited Certifiers

2.10.1 Complying Development Certificates

This Plan authorises that, in relation to an application made to an Accredited Certifier for a Complying Development Certificate:

- the Accredited Certifier must, if a Complying Development Certificate is issued, impose a condition requiring a Development Contribution, if such a contribution is authorised by this Plan; and
- such contribution can only be a monetary contribution required under this Plan; and
- the amount of the monetary contribution that the Accredited Certifier must so impose is the amount determined in accordance with this Plan.

It is the responsibility of the principal certifying authority to accurately calculate and apply the Development Contribution conditions to Complying Development Certificates. Deferred payments of contributions required by a condition of a Complying Development Certificate will not be accepted.

Failure to follow this procedure may render such a certificate invalid and expose the certifier to legal action.

2.10.2 Construction certificates

It is the responsibility of an Accredited Certifier issuing a construction certificate to certify that any Development Contributions required as a condition of Development Consent or Complying Development Certificate have been paid to the Council prior to the issue of the certificate.

The Accredited Certifier must ensure that the applicant provides a receipt (or receipts) confirming that contributions have been fully paid and copies of such receipts must be included with copies of the certified plans provided to the Council in accordance with clause 142(2) of the EP&A Regulation. Failure to follow this procedure may render such a certificate invalid and expose the certifier to legal action.

The only exceptions to the requirement are where a work in kind, material public benefit, dedication of land and/or deferred payment arrangement has been agreed by the consent authority. In such cases Council will issue a letter confirming that an alternative payment method has been agreed with the applicant.

2.11 Adjustment of contributions rates under this Plan

The purpose of this section is to ensure that the monetary contribution rates imposed at the time of Development Consent are adjusted to reflect the indexed cost of the provision of infrastructure included in this Plan.

In accordance with clause 32(3)(b) of the EP&A Regulation, Council may, without the necessity of preparing a new or amending contributions plan, make changes to the section 94 contribution rates set out in this Plan to reflect annual variations to the Consumer Price Index (All Groups Index) for Sydney as provided by the Australian Bureau of Statistics.

Note: The contribution rate will not be less than the contribution rate specified at the date of the adoption of this Plan.

2.12 Adjustment of contributions required by a condition imposed under this Plan

The purpose of this section is to ensure that the monetary contributions imposed on Developments at the time of Development Consent are adjusted at the time of payment to reflect the indexed cost of the provision of infrastructure included in this Plan.

A section 94 contribution required by a condition of Development Consent imposed in accordance with this Plan will be indexed between the date of the grant of the Development Consent and the date on which the contribution is paid in accordance with the Consumer Price Index (All Groups Index) for Sydney as provided by the Australian Bureau of Statistics.

The current contribution rates are published by the Council and are available from the Council offices. Should the Council not validly publish the applicable contribution rates, the rate applicable will be calculated in accordance with the most recent validly published rate.

2.13 Timing of payment of monetary contributions required under this Plan

Council's policy in relation to the timing of payments of monetary contributions required under this Plan is as follows:

- Development applications involving subdivision - prior to the release of the subdivision certificate.
- Development applications involving building work - prior to the release of the construction certificate.
- Development applications where no subdivision or building approval is required – prior to the issue of Development Consent or release of the occupation certificate.
- Complying development works – prior to the issue of a Complying Development Certificate.

2.14 Policy on deferred or periodic payments

Council may accept the deferred or periodic payment of part or all of a monetary contribution required under this Plan if the applicant, or any other person entitled to act upon the relevant consent, makes a written request and can satisfy the Council that non-compliance with the payment provisions is justified.

Acceptance of any request for deferred or periodic payment is entirely at the discretion of the council.

Deferred or periodic payments may be permitted in any of the following circumstances:

- Compliance with the provisions of Section 2.13 of this Plan is unreasonable or unnecessary in the circumstances of the case and deferred or periodic payment of the contribution will not prejudice the timing or the manner of the provision of public facilities included in the works program.

- 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 the council and the applicant have a legally binding agreement for the provision of the works or land dedication.

If the Council does decide to accept deferred or periodic payment, the Council will require the applicant to provide a bank guarantee by a bank or other appropriate financial institution for the full amount of the contribution or the outstanding balance on condition that:

- the bank guarantee be for the amount of the total contribution, or the amount of the outstanding contribution, plus a provisional amount equal to 10 percent of the outstanding amount plus any charges associated with establishing or operating the bank security;
- the bank or financial institution must pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the Development Consent or the carrying out of development;
- the bank or financial institution's obligations are discharged when payment to the Council is made in accordance with this guarantee or when Council notifies the bank or financial institution in writing that the guarantee is no longer required; and where a bank guarantee has been deposited with the Council, the guarantee shall not be cancelled until such time as the original consent contribution (plus indexation in accordance with this Plan from the date of the Development Consent) has been paid

2.15 Material public benefits and dedication of land offered in part or full satisfaction of contributions

A person may make an offer to the Council to carry out works or provide another kind of Material Public Benefit or dedicate land, in lieu of making a contribution in accordance with a condition imposed under this Plan, in the terms described below.

2.15.1 Offer of a Material Public Benefit made after the imposition of a Development Contribution condition under this Plan

The Council may accept an offer made in writing to the Council that provides for:

- a Material Public Benefit (other than the dedication of land or the payment of a monetary contribution) in part or full satisfaction of a condition already imposed requiring the payment of a monetary contribution; or
- the dedication of land free of cost towards the provision of public facilities to meet the demands of the development.

Where the Council accepts such an offer, it is not necessary for the consent to be amended under section 96 of the EP&A Act.

2.15.2 Offer of a Material Public Benefit made before the imposition of a Development Contribution condition under this Plan

An applicant for consent to carry out development to which this Plan applies may request that any consent granted to the development is made subject to a condition that the applicant carries out work or provides another Material Public Benefit that would satisfy the requirements of this Plan in relation to the development.

The applicant's request:

- may be contained in the relevant development application; or
- may constitute an offer to enter into a Planning Agreement relating to the development accompanied by the draft agreement.

The Council will consider the request as part of its assessment of the development application.

If the Council decides to grant consent to the development and agrees to a request made in the relevant development application, it may impose a condition under section 80A of the EP&A Act requiring the works to be carried out or the Material Public Benefit to be provided.

If the applicant makes an offer to enter into a Planning Agreement, the Council will, if it proposes to enter into the agreement, publicly notify the draft agreement and an explanatory note relating to the draft agreement together with the development application in accordance with the requirements of the EP&A Act.

If the Council decides to grant consent to the development and agrees to enter into the Planning Agreement, it may impose a condition under section 93I (3) of the EP&A Act requiring the agreement to be entered into and performed.

2.15.3 Matters to be considered by the Council in determining offers of Material Public Benefits

In addition to any matters identified above the Council will take into account the following matters in deciding whether to accept an offer of material public benefit:

- the requirements contained in any Material Public Benefits or works-in-kind policy that the Council has adopted; and
- the standard and timing of delivery of, and security arrangements applying to, the works the subject of the offer are to Council's satisfaction; and
- the conditions applying to the transfer of the asset to the Council are to Council's satisfaction; 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.

Where the offer of Material Public Benefit does not relate to an item of infrastructure identified in this Plan, the Council will take into account the following additional matters:

- the overall benefit of the proposal; and
- the proposal is for the provision of an appropriate alternative facility to that which the contribution was required which will provide public benefit to the local community; and
- whether the works schedule included in this Plan would require amendment; and
- the financial implications for cash flow and the continued implementation of the works schedule included in this Plan (including whether the Council would need make up for any shortfall in contributions by its acceptance of the offer); and
- the implications of funding the recurrent cost of the facility(ies) the subject of the offer.

2.15.4 Agreements to be in writing

Council will require the applicant to enter into a written agreement for the provision of the works prior to the commencement of works or the development. If the offer is made by way of a draft Planning Agreement under the EP&A Act, the Council will require the agreement to be entered into and performed via a condition in the Development Consent.

Works in kind and Material Public Benefit agreements shall be made between the Council and the developer and (if the developer is not the land owner) the land owner.

Agreements shall specify (as a minimum) the works the subject of the offer, the value of those works, the relationship between those works and this Plan, the program for delivering the works.

Planning Agreements shall address the matters included in the EP&A Act and EP&A Regulation.

2.15.5 Valuation of offers of works-in-kind and other Material Public Benefits

The value of works offered as works-in-kind is the Attributable Cost of the works (or a proportion of the Attributable Cost if the offer involves providing only part of a work) indexed in accordance with the provisions of this Plan.

The Attributable Cost of works will be used in the calculation of the value of any offset of monetary contributions required under this Plan.

The value of any other kind of Material Public Benefit will be determined by a process agreed to between the Council and the person making the offer.

2.16 Pooling of funds

To provide a strategy for the orderly delivery of the infrastructure, this Plan authorises monetary contributions paid:

- for different purposes in accordance with the conditions of various Development Consents authorised by this Plan; and
- for different purposes under any other contributions plan approved by the Council

to be pooled and applied progressively for those purposes.

The priorities for the expenditure of pooled monetary contributions under this Plan are the priorities for works as set out in the relevant works schedules.

In deciding whether to pool and progressively apply contributions funds, Council is satisfied that this action will not unreasonably prejudice the carrying into effect, within a reasonable time, of the purposes for which the money was originally paid.

2.17 Accountability and access to information

Council is required to comply with a range of financial accountability and public access to information requirements in relation to Development Contributions. These are addressed in Divisions 5 and 6 of Part 4 of the EP&A Regulation and include:

- maintenance of, and public access to, a contributions register;
- maintenance of, and public access to, accounting records for contributions receipts and expenditure;
- annual financial reporting of contributions; and
- public access to contributions plans and supporting documents.

These records are available for inspection free of charge at the Council's administration office.

2.18 Review of Plan

This Plan will be reviewed from time to time to ensure that:

- the Plan remains financially sustainable;
- the Plan continues to address the infrastructure needs generated by new development;
- the Local Infrastructure will be delivered in a reasonable time; and
- that contribution rates remain reasonable over time.

Matters to be addressed may include (but not necessarily be limited to) the following:

- changing estimates of the costs of the infrastructure items;
- adjusting estimated costs to completed costs for completed Local Infrastructure; and
- review of the need for Local Infrastructure demanded by development.

Review, amendment and updating of the Plan (except for the types of amendments specified in clause 32(3) of the EP&A Regulation) will require preparation and public exhibition of a new contributions plan.

2.19 Savings and transitional arrangements

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

3. Relationship between expected development and demand for infrastructure

3.1 Need for public car parking facilities

All development approved in the City of Orange LGA is required to make adequate arrangements for vehicular access and parking related to the development.

Parking and access needs are most significant for developments generating higher vehicle trips, particularly developments that include commercial, professional, retail and entertainment uses.

It is also the case that a significant component of the parking needs associated with these types of uses relates to employees and visitors. Where the uses are concentrated in a centre there are also visitor 'linked trips' where one car parking space may be used for a number of visitor purposes. In such cases efficiencies can be gained by having car parking provided in a few consolidated locations instead of on all the individual development sites.

Car parking to meet the needs of Orange CBD development is provided as on-street spaces and as off-street spaces in formalised car parks.

Council has traditionally had an active role in ensuring that the Orange CBD functions efficiently through providing an appropriate level of on-street car parking and through providing numerous public car parks on land in and adjacent to the CBD. Indeed, the CBD could not function properly without Council's ongoing provision of these parking assets.

Council has been so active in this area over the years that it has provided a level of car parking that is in excess of current CBD development needs.

The quantification of excess public parking capacity was assessed in the *Orange CBD Parking Study* (Christopher Hallum & Associates 2006).¹ In 2007:

- Council provided a total of 1,180 on street and 1,653 off street car parking spaces serving the Orange CBD;
- at peak periods a total of 361 of the 1,653 off street Council spaces were unutilized;
- Council had accepted monetary contributions from non Residential Accommodation development in lieu of on-site provision of parking for a further 54 spaces, leaving a notional 307 space public parking surplus at peak times.

In recognition of the surplus, Council's policy is to accept contributions from development to help pay for the historic cost of providing the surplus spaces, rather than apply contributions toward the construction of new parking facilities.

At the time this Plan was prepared, Council had required total monetary contributions under previous car parking contributions plans for the equivalent of approximately 45 spaces. This means that there are still around 300 surplus public parking spaces which are available for new developments to utilise and make contributions toward under this Plan.

¹ The Hallum study formed the basis of justification for Council levying contributions for car parking under a previous contributions plan – i.e. *Car Parking Development Contributions Plan 2007*. The Hallum study and the previous contributions plan contain more details on parking supply and demand in the Orange CBD.

The parking facilities relating to the surplus parking provision are shown in **Table 1**.

Table 1: Public parking facilities that have been provided in advance of development

Car park	Facility costs to be recouped under this Plan	No. of spaces	Unindexed cost	Timing of provision
Ophir car park	Land acquisition and car park construction	217	\$2,426,125	Land acquisition and construction in 1997 with 10 year loan program
Sale Street car park	Construction of car park on leased land, and subsequent acquisition of land	37	\$838,700	Construction 2006; acquisition 2007
Endsleigh Avenue car park	Construction of car park on leased land, and subsequent acquisition of land	86	\$549,110	Construction 1993; acquisition 2007
Totals		340	\$3,814,025 @ \$11,218 per space*	

* At the time this Plan was prepared the indexed cost per space was \$13,318, exclusive of the plan administration contribution

This Plan seeks to recoup from non Residential Accommodation development in or adjacent to the Orange CBD, in the area shown hatched in **Figure 1**, the cost of publicly available car parking spaces that have been provided in advance of development occurring.

Contributions for car parking may be:

- made on a voluntary basis by the developer for part or all of the parking required by the development by way of Development Contribution under this Plan instead of physically providing them on the development site; or
- required as a condition of Development Consent issued by the Council where the development site characteristics or design features of the development are such that it would be impractical or inappropriate for some or all of the required parking to be provided on the development site.

Notes:

- Contributions shall not be offered by the developer, or required by the Council, for car parking associated with Residential Accommodation development or tourist or visitor accommodation. This is because Council considers it inappropriate that those using these developments should have to park in public areas physically removed from the residence.
- For the purposes of this Plan on-street parking is not deemed to meet any unmet demand. On-street parking provides choice and convenience due to a range of time limits and configurations. The relationship of on-street parking and street operations means that changes may be made to on-street parking arrangements (including a reduction in spaces) to improve traffic movement and/or pedestrian safety in and around the CBD. As a consequence, on-street parking is not considered to be a constant and can change due to non development related factors.
- While the contributions collected under this Plan are for recoupment of the costs of land acquisition and works already undertaken in anticipation of future demand, Council will apply the collected funds to improvements that increase the car parking capacity or that

enhance the usability of the existing parking facilities in the CBD area. Examples of the types of projects that may be funded using contributions collected under this Plan include:

- Sign boards showing available parking spaces in real time
 - Number plate recognition technology and sensors to assist in policing of time-limited spaces so as to ensure turnover of these spaces
 - Reconfiguration of parking space locations and time restrictions in car parks
 - Construct decked parking in existing at-grade public car parks
 - Construct new at-grade car parks on public land currently used for other purposes.
- A contribution under this Plan does not infer the provision of any specific, general or implied rights, privileges or trusts in respect to any public car parking areas or spaces within the CBD. Payment of contributions does not provide for exclusive use of any public parking spaces.
 - Car parking requirements for all developments are shown in the relevant sections of Orange City Council's Development Control Plan (DCP) current at the time that the development application is lodged.

3.2 How is the contribution rate calculated?

$$\text{Contribution per deficient on-site parking space (\$)} = \frac{\text{\$Cost} + \text{AC}}{S}$$

Where:

$\text{\$Cost}$ = the indexed, completed cost of providing the public parking infrastructure to be recouped from contributions collected under this Plan, expressed in dollars (i.e. \$4,528,001 or \$13,318 per space)

AC = the estimated cost to administer the public car parking components of this Plan, assessed to be 3% of the cost of providing the infrastructure (i.e. \$135,833, or \$399 per space)

S = the total number of public car parking spaces provided in the public parking facilities to be recouped under this Plan (i.e. 340 spaces)

Where the development involves a change in the use of a building and does not include the creation of additional floor area, the above contribution rate will be multiplied by 50%.

3.3 How are infrastructure costs apportioned?

The spaces to be recouped under this Plan have already been provided at Council's cost.

Any non Residential Accommodation development situated within area identified in **Figure 1** that does not address its parking requirements through on-site provision of the spaces will make a full contribution toward the provision of public parking that has been provided in advance of development.