

19.4 Questions with notice: Councillor Warren - Urgent engagement of specialist Section 7.11 consultant to update now expired s7.11 fees and charges

Clr Erica Warren has submitted the following question with notice for consideration:

Question

Can Council please:

1. immediately prepare Section 7.11 Plan for Developer Contributions for Jamberoo and the entire Municipality where they have or are soon to expire.
2. engage with a specialist section 7.11 consultant to write the expired Section 7.11 fees and charges for developer contributions.
3. ensure the specialist consultant fee is recouped through future projects permissible with IPART as a legitimate administration cost recovery of 8% for future works.
4. include the cost of the specialist consultant in the 2025-26 budget.

Councillor information providedBackground

Section 7.11 Contribution Plans require formal procedures to be followed to achieve final sign off by IPART.

Section 7.12 Contributions are based on a percentage of construction costs and are significantly lower than Section 7.11 Contributions.

In Council's current circumstance it may be best to engage a Specialist Section 7.11 planner to complete this work.

An administration fee is built into the Developer Contributions to offset Council's cost of management of the scheme. Failure to take this action will result in loss of opportunity to gain meaningful contributions for infrastructure needs generated as a result of growth in our population.

We must ensure that our fees and charges for developer contributions are up to date with applicable charges with the current market. Currently, our expired (November 2024) fees and charges in Jamberoo were at a flat rate of \$21,000 per new dwelling.

We cannot rely on the Section 7.12 contribution which is a significantly smaller contribution of \$50,000 per development compared with for example: Section 7.11 fee of \$21,000 for 900 new dwellings, equating to \$18,900,000 in developer contributions. Considering Golden Valley 50 new dwellings with a \$21,000 contribution fee would have equated to \$1,050,000.

Chief Executive Officer response

Development contributions in NSW are levied on Development Applications (DAs) and Complying Development Certificates (CDCs) under either a Section 7.11 or Section 7.12 Contributions Plan.

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Section 7.11 Contributions

Contributions levied under Section 7.11 of the *Environmental Planning & Assessment Act 1979* are calculated based on the number of additional lots, dwellings, gross floor area or land area to be provided.

Under Section 7.11, there must be a demonstrated link between the development and the new local infrastructure to be funded by Council (i.e. a nexus). If new roads, parks, community facilities etc. are required to service the population of a new subdivision a Section 7.11 Plan will outline the cost of this infrastructure and apportion a contribution fee for each new lot.

It is worth noting that Contribution Fees collected by Council can only be spent on Council infrastructure. For example, as Council does not provide Educational Facilities (preschools, schools etc.) Contribution Fees could not be collected by Council for providing new a new preschool.

To ensure contribution fees are reasonable the then Minister for Planning & Infrastructure established a \$20,000 cap per lot on Section 7.11 contributions. <https://www.planning.nsw.gov.au/sites/default/files/2023-03/epaa-local-infrastructure-contributions-direction-2012.pdf>

In 2022 the Kiama LGA had four contributions plans in place:

- Section 7.11 Contribution Plan No. 1 – Municipal Wide.
- Section 7.11 Contribution Plan No. 2 – Northern Region.
- Section 7.11 Contribution Plan No. 3 – Southern Region.
- Section 7.12 Contribution Plan.

The Contribution Plan No. 1 applied uniformly across the LGA, while Plan No. 2 applied to Minnamurra, Kiama Downs, Kiama, Kiama Heights and Jamberoo and Plan No. 3 applied to Gerringong and Gerroa.

In December 2023 the three Section 7.11 Contributions Plans were repealed. These Plans were repealed as they were initially prepared in June 1993 and were only considering the projected growth of the LGA up until 2000. Meaning they were extremely outdated and not contemporaneous some 23 years later. This situation was reported to the previous Council.

Likewise, as reported to the Ordinary December 2024 meeting, the contributions held in the Section 7.11 reserve were transferred to the Section 7.12 reserve in the 2023/24 financial statements. Any future Section 7.11 income was transferred to the Section 7.12 reserve.

Section 7.12 Contributions

Contributions levied under Section 7.12 are calculated based on the proposed cost of carrying out the development. The maximum levy rates applicable to development in the Kiama LGA are:

- 0.5% levy for development cost between \$100,001 and \$200,000.
- 1% levy for development cost greater than \$200,000.

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It is worth noting that while Section 7.11 contributions can only be levied against DAs which result in a net increase on demand for infrastructure (i.e. subdivisions, multiple occupancies, new commercial/industrial developments), Section 7.12 contributions are levied against **all** DAs and CDCs with an estimated value greater than \$100,000.

In addition to applying to all DAs and CDCs there is **no cap** on Section 7.12 contributions, meaning that the more significant the development the more contribution fees levied. Section 7.12 contributions can also be spent on a wider variety of local infrastructure.

Golden Valley example

On the date the NSW Land and Environment Court determined the Golden Valley Subdivision, Council had repealed its Section 7.11 plans and therefore the Section 7.12 plan applied. The estimated cost of the subdivision was \$3Million and therefore a condition of consent has been included in the determination requiring the payment of \$30,000 (i.e. 1%) in Section 7.12 contributions.

If a single dwelling is constructed on each of the proposed 50 lots a Section 7.12 contribution will be levied against each DA/CDC for these homes. If the average construction cost of a standard dwelling is \$700,000, Council will receive an additional \$350,000 in Section 7.12 contributions (1% = \$7,000 x 50 = \$350,000). This results in a total of \$380,000 in contribution fees for 50 new dwellings under Section 7.12.

If the Section 7.11 Plans had applied, the applicable contribution rate was approximately \$7,000 per lot. Once a Section 7.11 contribution had been paid for the creation of each lot, Council are then **unable** to charge a Section 7.12 for the construction of any dwellings on these lots. This means that Council would have received a total of \$350,000 in contribution fees for 50 new dwellings under Section 7.11 (\$7,000 x 50 = \$350,000).

In this instance, Section 7.12 enables Council to levy more money in contribution fees.

Council's Organisational Structure and Strategic Works Program

Council's Strategic Planning team currently includes a Full Time Equivalent (FTE) Developer Contributions Officer role. This role is funded by the Council's Developer Contributions Reserve.

Council's draft Local Housing Strategy includes several actions relating to infrastructure and mechanisms for ensuring appropriate funding mechanisms. The adoption of the Local Housing Strategy and the actions to prepare an infrastructure framework are key to ensuring Council are levying appropriate contributions. As part of development the infrastructure framework and site-specific Structure Plans and Development Contribution Plans for the proposed urban expansion areas it is possible that site-specific Section 7.11 plans or site-specific Planning Agreements may be necessary.

There is no budget allocated to complete this work as part of the 2025-26 capital budget that is currently on public exhibition. The work is not currently scheduled in the 2024-25 DPOP and staff resources have not been allocated. Completing this work would divert staff away from the existing adopted priorities of Council which need to be met.

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In the short term the Councillor could make a submission to include this project in the Delivery Program and Operational Plan for future years. It is to be noted that Councilors and the organization must adhere to the State imposed Performance Improvement Order and ensure that the operating budget returns to a surplus in the next two years. Budget parameters were already to and implemented in the draft documents currently on display and this work represents a financial increase to the exhibited draft.

There is a balance to be found in adhering to the PIO, delivering within our means and not overburdening the resources of the organization whilst full focus is on achieving the PIO. As noted above, Council's current resolved approach of Section 7.12 yields a greater return of fees and charges to council with the FTE cost already offset by the developer contribution reserve.