

Policy

Local Planning Policy 4 Administration of Development Contribution Plans



Local Planning Policy 4 Administration of Development Contribution Plans

To complement the provisions of the Town Planning Scheme in administering Development Contribution Plans within the Town Planning Scheme area

Adopted:	14 December 2016
Last reviewed:	[Insert date of last review if applicable]
Legal Authority:	Local Government Act Section 2.7 – The Role of Council Part 2 of Schedule 2 Deemed Provisions – Planning and Development (Local Planning Schemes) Regulations 2015

Application:

The provisions of this policy apply to land within Special Control Areas - Development Contribution Areas as shown on the Town Planning Scheme No. 2 (Scheme) map and detailed in Schedule V of the Scheme.

Policy:

1. Procedure for administering a proposed Development Contribution Plans (DCPs) where an amendment to the Scheme is regarded as ‘seriously entertained’.

An amendment to the Scheme will be considered by the City of Kwinana as a ‘seriously entertained’ planning proposal once the amendment has been initiated by the Council and consent has been granted for public submissions to be sought. This approach is consistent with paragraph 5, clause 5.4 of State Planning Policy 3.6: Development Contributions for Infrastructure and to date, has been supported by the Western Australian Planning Commission in applying relevant conditions of subdivision approval that have the effect of the developer being liable for contributions under the DCP proposed by the amendment to the Scheme.

- 1.1 Where an amendment is regarded as ‘seriously entertained’, and proposes a DCP applicable to the land subject to the development application or subdivision application, the City will either:
 - a) Impose a condition of planning approval that generally states, “Prior to the commencement of development, appropriate arrangements will be made with the

City of Kwinana for the payment of development contributions as proposed by Amendment XX to Town Planning Scheme No. 2 to the satisfaction of the Chief Executive Officer, City of Kwinana.”

- b) Recommend the imposition of a condition of subdivision approval that generally states, “Appropriate arrangements are to be made with the City of Kwinana for the payment of development contributions as proposed by Amendment XX to Town Planning Scheme No. 2 to the satisfaction of the Chief Executive Officer, City of Kwinana.”

- 1.2 Where the proposed Amendment has not yet been gazetted, and the developer is seeking clearance of a condition of subdivision or planning approval (outlined in clause 1.1), the City will require that the developer enter into a legally binding deed of agreement (agreement) with the City in accordance with the following provisions:

Responsibility for costs

- (a) The developer will be responsible for all costs associated with the preparation of the agreement. The agreement will be prepared by the City’s solicitors and must be satisfactory to the City, acting reasonably.

Provisional contributions

- (b) A provisional contribution will be made to the City at the time of liability for the payment of development contributions, as provided by the Scheme. The provisional contribution will be based on the City’s best estimates of the cost contribution payable by the developer at the time of liability of the contribution.
- (c) The provisional contribution referred to in clause 1.2(b) will also include an additional contingency amount of 30% of the provisional contribution to allow for any cost increase from the time of preparing the provisional contribution and determination of the actual contribution after gazettal of the proposed Amendment. The provisional contribution and 30% contingency amount will be held as security by the City as restricted funds where interest will be earned based on the cash interest rates of the Municipal Fund. Interest earned at the cash interest rates of the Municipal Fund on the provisional contribution and 30% contingency amount in excess of the liability shown in the adopted cost apportionment schedule for the developer’s land will be credited to the developer for the period up to the time of approval of the first DCP Report following the gazettal of the proposed Amendment.

Acquittal of agreements (actual contribution and timing)

- (d) The agreement will provide that following the gazettal of the proposed Amendment:
 - i) Payment of the development contribution shall be in accordance with the Scheme and the adoption of the first DCP Report and cost apportionment schedule; and
 - ii) Any difference between the provisional contribution (including the contingency amount and any interest earned on the provisional contribution and contingency amount calculated on the cash rate for the quarter preceding the payment date, on a pro rata basis) and the actual contribution liable under the Scheme shall be made good by either the developer or the

City whomever that may be, within 60 days of the adoption of the applicable Cost Apportionment Schedule.

- (e) Upon completion of the payment arrangements referred to in clause 1.2(d) the agreement will be at an end.

Discretion to vary the above provisions

- (f) The Chief Executive Officer (CEO) may vary the provisions of clauses 1.2(b) – (d) inclusive and negotiate a specific arrangement with a developer, in appropriate circumstances and where the CEO is satisfied that the City's ability to receive the actual development contribution liable under the proposed Amendment once gazetted is sufficiently secured. In considering a request under this clause, the CEO will have regard to the following matters:
- i) Where land is proposed as security in lieu of the 30% contingency amount referred to in clause 1.2(c):
- The developer will provide a valuation report prepared by a certified land valuer within the past 6 months, that demonstrates the value of the land proposed as security exceeds the contingency amount;
 - Where a staged development is proposed and the land offered as security forms part of the development at a particular stage, the City will require an updated valuation of the land that demonstrates sufficient value in the remaining land not forming part of the development; and
 - A caveat will be required to be lodged on the land offered as security that registers the City's interest in the land.
- ii) Where a bank guarantee is proposed as security in lieu of the 30% contingency amount referred to in clause 1.2(c), the bank guarantee shall be for the contingency amount, will be unconditional and not have an expiry date.
- iii) Whether the developer is likely to provide infrastructure item/s required by the proposed Amendment as part of their subdivision or development works and will in all likelihood receive a credit for the works in accordance with clause 2 of this policy.
- (g) Where the development is being undertaken by a State Government Department the CEO has discretion to waive the requirement for a provisional contribution and contingency amount.
- (h) Where the development is for 4 dwellings / lots or less and the proposed Amendment relates to community infrastructure, the CEO has the discretion in appropriate circumstances to waive the requirement for a legal agreement under clauses 1.2(b) – (d) where the developer pays the City a provisional contribution and 15% escalation allowance at the time of seeking clearance for the subdivision / development. Payment under this clause will constitute full and final discharge of the developer's liability under the development contribution plan proposed by the Amendment.

2. Acceptance of works-in-kind and/or crediting works undertaken by the developer

Clause 6.16.5.14.1 of the Scheme allows for the developer to pay its development contribution by the provision of physical infrastructure, or some other method acceptable to the local government. This is generally referred to as 'works-in-kind'. Priority list or priority timing refers to the infrastructure item/s identified in the current DCP report (as adopted post gazettal, or the most up to date draft) as items that will be required within approximately 24 months and which are generally crucial to development of a DCP area. In order for the CEO to accept works-in-kind by a developer as a credit towards the developer's contribution, the following provisions shall apply:

- (a) The infrastructure item must be an item included in the DCP provided by the Scheme. Infrastructure items will not be finalised until gazettal;
- (b) In order to obtain credits (offsets against a DCP liability) or accrue interest on works-in-kind, the infrastructure has to be on the priority list established in the current DCP Report. As only future priorities can be set within a DCP Report, all historical pre-funded items (that pre-date the DCP gazettal and this policy) without appropriate arrangements are priorities by default.
- (c) Before commencing construction of infrastructure items, developers are required to enter into an appropriate arrangement with the City. The arrangement can be in the form of a legal agreement (for items of fundamental importance to the DCP or for complex or unusual arrangements) or an exchange letter. The City will determine whether a letter or an agreement is appropriate in the relevant circumstance.
- (d) As part of the arrangement, developers are required to provide detailed costs and scope of works to the City for approval prior to commencement of construction of pre-funded infrastructure.
- (e) The City is to verify all cost claims for completed works (or completed stages) before any credits (offsets against a liability) will be applied.
- (f) Works-in-kind infrastructure credits will be credited (offset against liability) to a developer in accordance with the priority timing established in the current DCP Report. Until supported by priority timing, an unrealised credit cannot be used for contribution offset purposes.
- (g) Council may in appropriate circumstances permit provisional off-sets for the pre-funding of expected items of infrastructure prior to the gazettal of the DCP, if the Council is satisfied:
 - (i) the item of infrastructure has a very high probability of being an item of infrastructure in the DCP and will be an item of priority infrastructure; and
 - (ii) the developer enters into an appropriate pre-funding agreement satisfactory to the City and generally in accordance with clauses 2(c) – (e) inclusive.
- (h) The pooling of DCP funding and credits across all infrastructure items allows for the prioritisation of infrastructure procurement.
 - (i) The cost of infrastructure items as detailed in the prevailing DCP Report determines the amount of credit allowable for such infrastructure and will be referenced in 2(c) and (d).

- (j) Unless the City determines otherwise, in the event of sale of partially subdivided land, existing DCP obligations will transfer with the land. Similarly, this will apply to any existing DCP credits associated with that development (the DCP cannot be required prematurely to pay out credits when land transfers).