

Local Planning Policy No. 4

Administration of Development Contributions



Local Planning Policy No. 4 – Administration of Development Contribution Plans

1.0 Objectives

- 1.1 To set out provisions that apply when administering Development Contribution Plans whilst an amendment to the Scheme is underway and given 'due regard' as defined in cl. 67(2), Schedule 2, Part 9 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
- 1.2 To set out the requirements for developers to meet, in order to claim a credit for the provision of land or works undertaken towards a Development Contribution Plan item.

2.0 Policy Application

- 2.1 The provisions of this policy apply to land within Special Control Areas - Development Contribution Areas as shown on the Local Planning Scheme No. 2 (LPS2) map and detailed in Schedule V of LPS2.

3.0 Definitions

Actual contribution: The final cost contribution, determined in accordance with the gazetted Scheme amendment and first Development Contribution Plan Report and Cost Apportionment Schedule adopted under that gazetted Scheme amendment.

Contingency amount: 30% of the *provisional contribution*.

Provisional contribution: The City's best estimate of the contribution, payable by the developer at the time the liability for cost contributions becomes payable in accordance with cl. 5.15.5.13.2 of the Scheme, whilst a Scheme amendment affecting the Development Contribution Plan is underway.

4.0 Policy Statement

- 4.1 Provisions for administering Development Contribution Plans when subject to a Scheme amendment.
 - 4.1.1 In accordance with State Planning Policy 3.6 – Infrastructure Contributions (SPP 3.6), cl. 6.10.2 Operative Scheme Provisions, the Western Australian Planning Commission (WAPC) will support the imposition of a condition of subdivision or development requiring contributions for the provision of infrastructure consistent with the proposed Development Contribution Plan (DCP), where a local government has advertised a DCP, and the submissions have been

considered by the local government and the amendment forwarded to the WAPC for final approval.

- (a) When the above applies,
 - (i) for a Development Approval, the City will impose a condition 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 Local Planning Scheme No. 2 to the satisfaction of the Chief Executive Officer, City of Kwinana.

- (ii) for a subdivision referral, recommend the imposition of a condition 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 Local Planning Scheme No. 2 to the satisfaction of the Chief Executive Officer, City of Kwinana.

4.1.2 Where the Scheme amendment has not yet been gazetted, and the developer is seeking clearance of a condition of subdivision or development approval, as set out in provision 4.1.1(a)(i) or 4.1.1(a)(ii) of this policy, the City will require that the developer enter into a legally binding deed of agreement (agreement) with the City in accordance with the following:

- (a) The developer will be responsible for all costs associated with the preparation of the agreement.
- (b) The agreement will be prepared by the City's solicitors and must be satisfactory to the City, acting reasonably.
- (c) A *provisional contribution* will be made to the City at the time of liability for cost contributions, as provided by the Scheme.
- (d) In addition to the *provisional contribution* referred to in provision 4.1.2(c) an *additional contingency amount* will be payable.

The *contingency amount* is to account for any cost increase from the time of preparing the *provisional contribution*, to determination of the *actual contribution* after gazettal of the Scheme amendment.

- (e) The *provisional contribution* and *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, in excess of the *actual contribution* liable, 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 Scheme amendment.
- (f) Following the gazettal of the Scheme amendment:
 - (i) The developer shall pay the City the *actual contribution* liable, in accordance with the gazetted Scheme amendment 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.

4.1.3 Upon completion of the payment arrangements being met, referred to in provision 4.1.2(f) of this policy, the agreement will be at an end.

4.2 Discretion to vary the above provisions

4.2.1 The City may vary provisions 4.1.2(c) of this policy and negotiate a specific arrangement with a developer where the ability to receive the *actual contribution* liable under the Scheme amendment, once gazetted, is sufficiently secured, provided the following is met:

- (a) Where land is proposed as security in lieu of the 30% *contingency amount*:
 - (i) 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*; or
 - (ii) 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
 - (iii) Under both circumstances outlined above, a caveat will be required to be lodged on the land offered as security that registers the City's interest in the land.

- (b) Where a bank guarantee is proposed as security in lieu of the 30% *contingency amount* referred to in provision 4.1.2(d) of this policy, the bank guarantee shall be for the *contingency amount*, will be unconditional and not have an expiry date.
 - (c) Where the developer seeks to provide an infrastructure item as part of their subdivision or development works and receive a credit for the works in accordance with provision 4.3 of this policy, the City must be satisfied that the item will be required by the proposed Amendment, once gazetted.
- 4.2.2 The City has discretion to vary or waive the requirement for a *provisional contribution* and *contingency amount*, where the development is being undertaken by a State Government Department.
- 4.2.3 The City has discretion to waive the requirement for an agreement to be prepared under provision 4.1.2 of this policy, where the development is for 4 dwellings / lots or less and the Scheme amendment relates to community infrastructure. In such instances, the developer shall pay the City the relevant *provisional contribution* and a 15% escalation allowance at the time of seeking clearance for the subdivision / development.

Payment under this provision will constitute full and final discharge of the developer's liability under the DCP proposed by the Scheme amendment.

- 4.3 The City has discretion to vary or waive the requirement for the *contingency amount* to be paid and the agreement to be prepared under provision 4.1.2 of this policy once Scheme Amendment 145 has been resolved under regulation 41(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* by Council.
- 4.4 Crediting land, or work undertaken by a developer, towards a DCP item
- 4.4.1 Where a developer is seeking to pay its cost contribution through the transfer of land or the provision of physical infrastructure, as provided by cl. 5.15.5.14.1 of the Scheme, the following 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) The infrastructure item 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 physical 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.
 - (i) As part of the arrangement, developers are required to provide detailed costs and scope of works to the City for approval prior to commencing construction of physical infrastructure.
 - (ii) The City is to verify all cost claims for completed works (or completed stages) before any credits (offsets against a liability) will be applied.
- (d) Where transferring land or the provision of physical infrastructure is provided, payment 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 to pay for, or offset, cost contributions.
- (e) The City may accept the transfer of land or the provision of physical infrastructure items prior to the gazettal of the DCP, if the City is satisfied:
 - (i) the item 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 the provisions 4.4.1(c) of this policy.

4.4.2 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 any agreement required under provision 4.4.1(c) of this policy.

4.4.3 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 to pay out credits prematurely when land transfers owners).

4.5 Annual Review of DCP

4.5.1 All costs will be reviewed annually in accordance with the requirements of Local Planning Scheme No. 2 and SPP 3.6. As part of the City's annual review it will review infrastructure cost estimates of each

infrastructure item by reviewing each DCP component and undertaking a full review of cost estimates.

4.5.2 Contingencies

- (a) In order to achieve the best balance of risk across developers, the City will apply contingencies at 50% of industry standard (as determined by the independent consultant providing estimating services for the DCP) for the design detail available at the time of estimating.

4.5.3 Timing and 'cut-off' for contributions & credits

- (a) The City won't enter any contributions into the CAS or adjust any credits after the 'cut-off' date, as determined by the City each year, which will generally be at the end of the first financial quarter of the year (i.e., 31 March).

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