

## LOCAL PLANNING POLICY

### LPP7: DEVELOPMENT & SUBDIVISION CONTRIBUTION

<i>Responsible Department</i>	Development Services
<i>Resolution Number</i>	C.2190
<i>Resolution Date</i>	18/12/2013
<i>Next Scheduled Review</i>	2021
<i>Related Shire Documents</i>	Local Planning Scheme No. 6
<i>Related Legislation</i>	Planning and Development Act 2005 Planning and Development (Local Planning Schemes) Regulations 2015

### OBJECTIVES

The primary objectives are to:

- (a) to promote the efficient and effective provision of public infrastructure and facilities to meet the demands arising from new growth and development;
- (b) to ensure that development contributions are necessary and relevant to the development to be permitted and are charged equitably among those benefiting from the infrastructure and facilities to be provided;
- (c) to ensure consistency and transparency in the system for apportioning, collecting and spending development contributions;
- (d) to ensure the social well-being of communities arising from, or affected by, development.

### DEFINITIONS

The following are definitions that may be used as part of this policy in addition to the definitions included in Local Planning Scheme No. 6:

**“Administrative costs”** means such costs as are reasonably incurred for the preparation and (with respect to standard infrastructure items) implementation of the development contribution plan.

**“Administrative items”** means the administrative matters required to be carried out by or on behalf of the local government in order to prepare and (with

respect to standard infrastructure items) implement the development contribution plan, including legal, accounting, planning engineering, and other professional advice.

**“Cost apportionment schedule”** means a schedule prepared and distributed in accordance with State Planning Policy 3.6 - Development Contributions for Infrastructure.

**“Cost contribution”** means the contribution to the cost of infrastructure and administrative costs.

**“Council”** means the elected members of the Shire.

**“Development contribution area”** means shown on the scheme map as DCA with a number and included in Schedule 13 to the Scheme.

**“Development contribution plan”** means a development contribution plan prepared in accordance with the provisions of *State Planning Policy 3.6 Development Contributions for Infrastructure* and the provisions of this Policy.

**“Development contribution plan report”** means a report prepared and distributed in accordance with State Planning Policy 3.6 - Development Contributions for Infrastructure.

**“Infrastructure”** means the standard infrastructure items (services and facilities set out in appendix 1 to State Planning Policy 3.6 - Development Contributions for Infrastructure) and community infrastructure, including recreational facilities; community centres; child care and after school centres; libraries and cultural facilities and such other services and facilities for which development contributions may reasonably be requested having regard to the objectives, scope and provisions of this policy.

**“Infrastructure costs”** means such costs as are reasonably incurred for the acquisition and construction of infrastructure.

**“LPS 6”** means Local Planning Scheme No 6.

**“Owner”** means an owner of land that is located within a development contribution area.

**“Scheme”** means Local Planning Scheme No 6.

**“Shire”** means the Shire of Northam.

## STATUTORY POWERS

This Local Planning Policy is made pursuant to clause 2.2 of the Shire’s Scheme.

## POLICY STATEMENT

A contribution will be sought when development and subdivision of land within the Shire occurs for items of infrastructure that are necessary to support the

orderly development of a specified area. Standard requirements include, but are not limited to, the provision of roads, water and sewerage facilities, utilities and public open space. Development contributions for infrastructure that does not fall within the standard requirements for community infrastructure may only be sought for such items to the extent that they have been identified in a development contribution plan which has been incorporated into the Shire' Scheme, or otherwise through voluntary agreement with the relevant developer/s.

These guidelines (based on the Commission's State Planning Policy 3.6) set out the principles underlying development contributions and the form, content and process for the preparation of a Development Contribution Plan. Development contributions are necessary and relevant to the development being permitted and are charged equitably among those benefiting from the infrastructure and facilities that are to be provided.

Development contributions can be sought for:

- (i) A new item of infrastructure;
- (ii) Land for infrastructure;
- (iii) An upgrade in the standard of provision of an existing item of infrastructure;
- (iv) The total replacement of infrastructure once it has reached the end of its economic life; and
- (v) Other costs reasonably associated with the preparation, implementation and administration of a development contribution plan.

The contributions are for the initial capital requirements only and not for the ongoing maintenance and/or operating costs of the infrastructure. Developers will only fund the infrastructure and facilities which are reasonable and necessary for the development and to the extent that infrastructure and facilities are necessary to service the development.

#### Development Contribution Plans

Development Contribution Plans need to identify growth trends based on service catchment areas, translate these trends into the infrastructure and facilities necessary to meet these increasing needs within the catchment and allocate the costs of meeting these increasing needs to existing residents and new residents proportional to their contribution to the need for the infrastructure and facilities. Development Contribution Plans must have a strategic basis and be linked to the Local Planning Strategy and strategic infrastructure plan and program which identify the infrastructure and facilities required over the next 5-10 years and the cost and revenue sources for the provision of the infrastructure.

### Development Contributions

For development and/or subdivision of land resulting in 1- 5 lots, the Shire will require the developer/subdivider to pay a contribution aligned with the Shire's Schedule of Fees and Charges. For developments/subdivisions resulting in more than 5 lots the Shire will require the developer/subdivider to submit a development contribution plan that addresses the following criteria:

- (a) The development contribution area to which the development contribution plan applies;
- (b) The infrastructure and administrative costs to be funded through the development contribution plan;
- (c) The method of determining the cost contribution of each owner; and
- (d) The priority and timing for the provision of infrastructure.

A Development Contribution Plan may specify the period during which it is to operate.

Where a Development Contribution Plan is required to be made, the Shire is **not** to:

- (a) Consider or recommend approval for subdivision; or
- (b) Consider or approve development of land within a development contribution area until:
  - (i) A Development Contribution Plan is in effect; or
  - (ii) The owner who has applied for subdivision or development approval has made arrangements for the payment of the owner's cost contribution.

Where a Development Contribution Plan is not in effect, the Shire may support subdivision or approve development where the owner has made other arrangements, satisfactory to the Shire, with respect to the owner's contribution towards the provision of infrastructure and administrative costs in the development contribution area.

### Principles underlying Development Contributions

Development contributions may be charged in accordance with the following principles:

- (a) **Need and the nexus**

The need for the infrastructure included in any development contribution plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).

- (b) **Transparency**  
Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.
- (c) **Equity**  
Development contributions should be charged from all developments within a development contribution area, based on their relative contribution to need.
- (d) **Certainty**  
All development contributions should be clearly identified and methods of accounting for escalation agreed upon at the commencement of a development.
- (e) **Efficiency**  
Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.
- (f) **Consistency**  
Development contributions should be applied uniformly across a development contribution area and the methodology for applying contributions should be consistent.
- (g) **Right of consultation and review**  
Landowners and developers have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe the contributions are not reasonable.
- (h) **Accountability**  
There must be accountability in the manner in which development contributions are determined and expended.

#### Land Excluded

In calculating both the area of an owner's land and the total area of land in a development contribution area, the area of land provided in that development contribution area for:

- (a) Roads designated as Primary Regional Roads and Other Regional Roads;
- (b) Existing public open space;
- (c) Government primary and secondary schools; and
- (d) Such other land as is set out in the development contribution plan is to be excluded.

#### Cost Apportionment Schedule

Within 90 days of the gazettal date of the endorsed development contribution plan, the Shire is to make available a Cost Apportionment Schedule to all owners in the development contribution area. The Cost Apportionment Schedule shall set out in detail the calculation of the cost contribution for each owner in the development contribution area. The Cost Apportionment Schedule does not form part of the Scheme.

*Example – Cost Apportionment Schedule*

LANDOWNER CONTRIBUTIONS FOR DC1 – AAAAA	\$ est.
<b>Land acquisition costs</b>	
<i>District Community Centre</i>	\$
<b>Planning and design costs</b>	
<i>District Community Centre</i>	\$
<b>Construction costs</b>	
<i>District Community Centre</i>	\$
<b>Landscaping costs</b>	
<i>District Community Centre</i>	\$
<b>Parking provisions</b>	
<i>District Community Centre</i>	\$
<b>Administration costs</b>	
<i>Costs to prepare the plan (and for standard infrastructure items) and administer</i>	
<i>Costs to prepare and review estimates</i>	
<i>Costs to prepare the cost apportionment schedule</i>	
<i>Total projected demand for the district community</i>	XX,XXX
<i>Less demand from existing residents</i>	X,XXX
<i>Less demand from external users</i>	XXX
<i>Less future demand outside of the development contribution plan timeframe</i>	X,XXX
<b>Total demand associated with development contribution plan</b>	X,XXX

Lot Description	Demand generated	Infrastructure requirement	Percentage of total demand %
1			
2			
3			
4			
5			
6			

### Cost Contributions Based on Estimates

The value of infrastructure and administrative costs is to be based on the amounts expended, but when expenditure has not occurred, it is to be based on the best and latest estimated costs available to the Shire. Where a Cost Apportionment Schedule contains estimated costs, such estimated costs are to be reviewed at least annually by the Shire:

- (a) In the case of land to be acquired, in accordance with determination of the value of land acquired;
- (b) In all other cases, in accordance with the best and latest information available to the Shire; and
- (c) Until the expenditure on the relevant item of infrastructure or administrative costs has occurred.

The Shire is to have such estimated costs independently certified by an appropriately qualified person and must provide such independent certification to an owner where requested to do so.

Where any cost contribution has been calculated on the basis of an estimated cost, the Shire:

- (a) Is to adjust the cost contribution of any owner in accordance with the revised estimated costs; and
- (b) May accept a contribution, based on estimated costs, as a final cost contribution and enter into an agreement with the owner accordingly.

Where an owner's cost contribution is adjusted, the Shire, on receiving a request in writing from an owner, is to provide the owner with a copy of estimated costs and the calculation of adjustments.

### Valuation of Land

If an owner objects to a valuation made by the valuer, the owner may give notice to the Shire requesting a review of the amount of the value, at the owner's expense, within 28 days after being informed of the value.

If the valuer does not change the value of the land to a figure acceptable to the owner, the value is to be determined:

- (a) By any method agreed between the Shire and the owner; or
- (b) If the Shire and the owner cannot agree, by arbitration in accordance with the *Commercial Arbitration Act 1985*.



### Liability for Cost Contributions

An owner is required to make a cost contribution in accordance with the applicable Development Contribution Plan. An owner's liability to pay the owner's cost contribution to the Shire arises on the earlier of:

- (a) The Commission endorsing its approval on the Diagram or Plan of Survey or the subdivision of the owner's land within the development contribution area;
- (b) The commencement of any development or commencing any new or extended use on the owner's land within the development contribution area;
- (c) The time of applying to the Shire or Commission for approval of any development or new or extended use, on the owner's land within the development contribution area; or
- (d) At the expiry of the Development Contribution Plan.

Notwithstanding the above, an owner's liability to pay the owner's cost contribution does not arise if the owner commences development of the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided since the gazettal of the Development Contribution Plan.

### Payment of Cost Contribution

The owner, with the agreement of the Shire, is to pay the owner's cost contribution by:

- (a) Cheque or cash;
- (b) Transferring to the Shire, or a public authority, land in satisfaction of the cost contribution;
- (c) Some other method acceptable to the Shire; or
- (d) Any combination of these methods.

The owner, with agreement of the Shire, may pay the owner's cost contribution in a lump sum, by instalments or in such other manner acceptable to the Shire.

Payment by an owner of the cost contribution, including a cost contribution based on estimated costs, constitutes full and final discharge of the owner's liability under the Development Contribution Plan.

### Charge of Land

The amount of any cost contribution for which an owner is liable, but has not paid, is a charge on the owner's land to which the cost contribution relates



and the Shire may lodge a caveat, at the owner's expense, against the owner's title to that land. The Shire, at the owner's expense and subject to such other conditions as the Shire thinks fit, is to withdraw a caveat lodged to permit a dealing and may then re-lodge the caveat to prevent further dealings. If the cost contribution is paid in full and, if required to do so by the owner, the Shire, at the expense of the owner, is to withdraw any caveat lodged.

#### Administration of Funds

The Shire is to establish and maintain a reserve account in accordance with the Local Government Act 1995 for each development contribution area into which cost contributions for that development contribution area will be credited and from which all payments for the cost of infrastructure and administrative costs within that development contribution area will be paid. The purpose of such a reserve account or the use of money in such a reserve account is limited to the application of funds for that development contribution area. Interest earned on cost contributions credited to a reserve account is to be applied in the development contribution area to which the reserve account relates. The Shire is to publish an audited annual statement of accounts for that development contribution area as soon as practicable after the audited annual statement of accounts becomes available.

#### Shortfall or Excess in Cost Contributions

If there is a shortfall in the total cost contribution when all cost contributions have been made or accounted for in a particular development contribution area, the Shire may:

- (a) Make good the shortfall;
- (b) Enter into agreements with owners to fund the shortfall; or
- (c) Raise loans or borrow from a financial institution.

But nothing listed above restricts the right or power of the Shire to impose a differential rate to a specified development contribution area in that regard.

If there is an excess in funds available to the development contribution area when all cost contributions have been made or accounted for in a particular development contribution area, the Shire is to apply the excess funds for the provision of additional facilities or improvements on that development contribution area.

#### Powers of the Shire

The Shire, in implementing the Development Contribution Plan, has the power to:

- (a) Acquire any loan or buildings within the Scheme area under the provisions of the *Planning and Development Act 2005*; and
- (b) Deal with or dispose of any land which it has acquired under the provisions of the *Planning and Development Act 2005* in accordance with the law and, for such purpose, may make such agreements with other owners as it considers fit.

### Arbitration

Any dispute between an owner and the Shire in connection with the cost contribution required to be made by an owner is to be resolved by arbitration in accordance with the *Commercial Arbitration Act 1985*.

### Stages of Creating Structured Development Contributions

There are three stages to the creation of development contributions.

#### (a) **Formulated and agreed**

A Development Contribution Plan is used to prescribe the cost contribution for owners in a development contribution area. Areas requiring a Development Contribution Plan, and the infrastructure needs and costs for such area, will generally be identified as part of the process of developing or amending planning schemes.

#### (b) **Calculated and applied**

Development contributions may be calculated and applied as:

- (i) standard conditions of subdivision or strata subdivision;
- (ii) conditions of development.

Alternatively, contributions can be implemented through voluntary legal agreements. This applies to subdivisional works such as roads, drainage, and the provisions of power, water and utilities. They may also be applied as conditions of development. The calculation will be to apply the detail of the Developer Contribution Plan to the development, including any offsets for the ceding of land or construction of infrastructure.

#### (c) **Due and Payable**

Development contributions become due and payable as part of the subdivision clearance process or prior to the commencement of development. Clearance of deposited plans, or strata plans as the case may be, to enable the issue of titles, should not occur until full payment, as calculated and applied, has been finalised. Development contributions are only payable on the proportion of land within a plan being requested for clearance in a development.

### Process for Determining Development Contributions for Community Infrastructure

The Shire requirements for development contributions for community infrastructure are to be calculated on the basis of:

- (a) the need for that infrastructure based on analysis of the demand;
- (b) the nexus where the relationship between the need for infrastructure and the new development is clearly established;
- (c) catchment areas that the infrastructure would service, identifying both existing demand and new demand that is associated with the development; and
- (d) the cost of providing the infrastructure, which should be based on the latest or best estimates available to the Shire and should include provision for regular adjustments to account for cost escalation over time.

Where the Shire is seeking contributions for community infrastructure, these need to be supported by:

- (a) a community infrastructure plan for the area, identifying the services and facilities required over the next 5 to 10 years (supported by demand analysis and identification of service catchments);
- (b) a capital expenditure plan (with at least 5 out years), which identifies the capital costs of facilities and the revenue sources (including capital grants) and programs for provision;
- (c) projected growth figures, including the number of new dwellings to be created at catchment level (suburb or district); and
- (d) a methodology for determining the proportion of costs of community infrastructure to be attributed to growth and the proportion to be attributed to existing areas.

### Forms of Contributions

Conditions relating to development contribution requirements can be satisfied by:

- (a) the ceding of land for roads, public open space, school sites, drainage and other reserves;
- (b) construction of infrastructure works which are transferred to public authorities on completion;
- (c) monetary contribution to acquire land or undertake works by or on behalf of public authorities; or
- (d) a combination of the above.

### The Application of a Credit in a Development Contribution Plan

A Development Contribution Plan may identify infrastructure that:

- (a) needs to be actioned with the first development in a development contribution area, such as a major road extension/connection;
- (b) is predominantly located on the developer's land, such as construction of a recreation facility to service the larger development contribution area.

The Shire may mandate that this work is undertaken, creating an in-kind contribution above that identified in the development contribution plan for that area (for example, the provision of physical infrastructure). In this instance, the developer and the Shire must negotiate a fair and reasonable outcome in relation to this credit. Appropriate negotiated outcomes may include:

- (a) Where a developer has other land holdings in the area, the credit is held by the Shire until it is required to be used by the developer to offset future contributions.
- (b) Where a developer has no further holdings in the area, the amount is held by the Shire as a credit to the developer until payments into the development contribution plan are received from subsequent developers. The credit is then reimbursed to the developer.
- (c) Where the development contribution plan is in credit from developer contributions already received, the credit should be reimbursed on completion of the works/ceding of land. Any indexing of the Developer Contribution Plan should be equally applied to such credits.

### Implementation

Implementation of Development and Subdivision Contribution to Community Infrastructure will be undertaken by local planning strategies, structure plans and local planning schemes and the day-to-day consideration of zoning, subdivision, strata subdivision and development proposals and applications, together with the actions and advice of agencies in carrying out their responsibilities.