

Local Planning Policy 25 – Interim Development Contribution Arrangements (LPP 25)

Management Procedure	Relevant Delegation
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Purpose

1. Background:

Development contributions are paid by owners who develop or subdivide within an established or proposed Development Contribution Plan (DCP) area. When approval is granted for a subdivision or development within a DCP area, conditions are generally imposed on the approval requiring the payment of development contributions. The owner/developer/subdivider of the land will then be required to make payment of the development contribution either prior to the finalisation of the subdivision or the commencement of construction, whichever is the earlier. Alternatively, the owner may decide to deliver the land or infrastructure (pre-fund) in lieu of paying money to the DCP, in which case an arrangement would be made with the City.

The process to establish a DCP involves a complex amendment to the City's Local Planning Scheme No.3, which can take up to 12-18 months to complete and involves the preparation and adoption of the DCP by the City, the recommendation of the Western Australian Planning Commission (WAPC) and ultimately the approval of the Minister for Planning.

Until a DCP has been finalised, *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) contemplate other arrangements, satisfactory to the City, being established to achieve cost contributions. *Regulation 73(1)* states that a local government must not levy a contribution for the provision of infrastructure unless there is a DCP for the relevant area. Conversely, the Regulations also state under *Regulation 73(3)* that a local government must not refuse to grant development approval on the grounds that a DCP is being prepared, unless the plan has already been advertised. The inference is that the City may contemplate refusal of the proposal where an advertised DCP has not been finalised through a Scheme Amendment and in situations where the payment of contributions has not been determined by a DCP Report and a Cost Contribution Schedule.

In the interests of progressing development in the area, a condition of approval can be included on a subdivision and/or development approval, which requires a legal agreement between the parties to address the matter of the contribution requirement (Refer Part 2.2.1.3 of this Policy). The legal agreement referred to as an Interim Development Contribution Arrangement (IDCA), provides a means by which subdivision and development conditions relating to interim contributions can be cleared and cost contributions made, allowing development to progress prior to formal gazettal of the DCP. Through this Policy, the City provides guidance to landowners as to what it deems to be a satisfactory arrangement.

It is desirable for the City to establish a formal position in regard to IDCAs to ensure that Council can carry out its role as administrator of the DCP in a fair, reasonable, consistent and transparent manner that minimises the financial risk to Council and the broader community.

This Policy has been prepared to provide a concise and documented procedure for the establishment of IDCAs within the City of Kalamunda (the City).

2. Application of the Policy:

This Policy applies to all development located within a proposed Development Contribution Area (DCA) in the City of Kalamunda.

3. Statutory Authority / Legal Status:

This Policy has been prepared under and in accordance with the deemed scheme provision in Schedule 2 of the *Planning and Development (Local Planning Scheme) Regulations 2015* (the Regulations).

a) Relationship to Local Planning Scheme No.3

This Policy is a local planning policy prepared, and to be read, with regard to the general provisions and objectives of Local Planning Scheme No.3 (the Scheme). The Policy is intended to augment and to be read in conjunction with the provisions of the Scheme relating to DCAs.

b) Relationship to other state planning/ development control policies

This Policy has due regard to and should be read in conjunction with State Planning Policies, in particular State Planning Policy 3.6 – Development Contributions for Infrastructure.

c) Relationship to other local planning policies

This Policy is intended to be read in conjunction with other applicable City of Kalamunda Local Planning Policies; of particular relevance to this Policy is Local Planning Policy No.24 – Development Contribution Areas.

Policy Statement:

1. Policy Objectives

The objectives of this Policy are to:

- a) Clearly outline the City's expectation in regard to satisfactory arrangements being established for contributions prior to formal gazettal of a DCA;
- b) Identify the City's position with regard to interim development contribution arrangements prior to the formal gazettal of a DCA;
- c) Identify the City's position with regard to the provision of infrastructure and land prior to the finalisation of a DCA and the potential for development contribution offsets accordingly; and
- d) Ensure that developers acknowledge the risks of entering into interim development contribution arrangements prior to finalisation of a DCA.

2. Specific Policy Requirements for Interim Development Contribution Arrangements

3. Subdivision and Development Approvals

- a) In considering subdivision applications for land within a draft DCA, where recommending approval of a subdivision application to the Western Australian Planning Commission (WAPC), the City will recommend Model Condition No. AD5 (as amended) which requires satisfactory arrangements being entered into with the City for the provision of an IDCA. The City will also generally recommend to the WAPC an advice note be included on the approval stating that the IDCA will be made pursuant to the provisions of the Regulations Scheme and those of this Policy.
- b) In considering development applications for land within a draft DCA, in approving an application, the City will generally impose a condition of approval requiring satisfactory arrangements being entered into with the City for the provision of an IDCA. The City will also generally provide an advice note with the approval, stating that the IDCA will be made pursuant to the provisions of the Regulations and those of this Policy.
- c) The recommended condition and associated advice note are noted below:

4. Recommended Condition – Development Approval

Prior to [INSERT TIMING] the landowner/applicant is to enter into a legally binding agreement with the City of Kalamunda to contribute towards the costs of providing the common service and community infrastructure as identified in Scheme Amendment No. [INSERT NUMBER] to the City of Kalamunda Local Planning Scheme No. 3.

5. Recommended Condition – Subdivision Approval

Arrangements being made with the City of Kalamunda to the satisfaction of the Western Australian Planning Commission for the landowner/applicant to contribute towards the cost of providing community and/or common infrastructure as established through amendment [INSERT NUMBER] (when gazetted) to the City's Local Planning Scheme No. 3. (Local Government).

6. Recommended Advice Note

In regards to condition no. (INSERT NUMBER) reference is made to the City of Kalamunda Local Planning Policy PDEV 25 (Interim Developer Contributions) which provides guidance regarding the City's expectations in regard to interim development contribution arrangements.

7. Information Required to Seek Clearance of Conditions

In applying for City clearance of conditions of subdivision and/or development a landowner and/or applicant is required to:

- a) Engage the City's legal representatives, or another appropriate legal representative, to prepare the requisite legal documentation (IDCA); and
- b) Seek the City's endorsement of the requisite legal documentation.

The legal documentation will consist of a legal agreement between the landowner and the City.

8. Required Content of Legal Agreement

To comply with a condition requiring an IDCA, the City will require the legal agreement to address the following matters:

- a) The payment of an interim development contribution amount to Council based on the latest available estimate cost contribution rate.
- b) The provision of security in addition to cost contributions to the value of 50 percent of the estimated cost contribution (or other amount to be agreed between the City and the applicant having regard for the risk of cost escalation within the subject draft DCP), netting all stages of subdivision or development which are the subject of that approval.
- c) The security required in accordance with Clause 2 shall be in the form of:
 - i. A cash payment;
 - ii. Bank guarantee;
 - iii. Charge and caveat over a portion of land having a value equal to or greater than the value of required security; or
 - iv. Another form of security to be agreed between the City and the applicant.

9. Estimated Cost Contribution

- a) The latest available estimated cost contribution rate will be the latest rate adopted by Council for the purposes of calculating interim development contributions.
- b) The City may take into consideration situations where developers have provided infrastructure and/or land, proposed to be included within the DCA, as part of their development as off-sets against the estimated contribution rate.
- c) Only cost items that have been constructed or provided for within a specified stage of subdivision and/or development will be acknowledged as an offset against contribution rates. Future offsets that have not been constructed or provided for within the specified stage or previous stages will not be acknowledged as an offset. However, should a cost item acknowledged as an offset against estimated contribution rates exceed the liability of the specified stage, the over provision may be used in subsequent stages as an offset against estimated contribution rates.
- d) In determining the value of any offsets, the City may have regard to the latest infrastructure/land infrastructure costs and land values adopted by Council or may determine rates derived from a combination of rates adopted by Council and supplied by the subdivider.

- e) Developers are to acknowledge that offsets are based on infrastructure and land envisaged to be included within the finalised DCA. The inclusion or exclusion of infrastructure, land and other cost items cannot be guaranteed by the City as final approval for a DCA is subject to the relevant statutory process. In this regard, the value of infrastructure and/or land provided as an offset against an IDCA payment may need to be paid to the City upon finalisation of the DCA should the infrastructure or item not be subsequently included within the finalised DCA.

10. Payment of Cost Contribution

The landowner, with the agreement of the City, is to pay the landowner's cost contribution by:

- a) Cheque or cash;
- b) Transferring to the City land in satisfaction of the estimated cost contribution;
- c) The provision of physical infrastructure;
- d) Some other method acceptable to the local government; or
- e) Any combination of the abovementioned methods.

11. Legal Costs

All direct and indirect costs associated with the preparation and finalisation of the requisite legal documentation for an IDCA is to be borne by the landowner of land to which the IDCA applies.

12. Receipting

Developers shall at all times maintain proper and itemised records of all relevant expenditure, including receipts and invoices for all relevant off-sets. Copies of all itemised records and expenditure shall be provided to the City upon request.

13. Variations to this Policy

If, after having regard to the financial, infrastructure, and administrative characteristics and risks associated with the proposed DCP, it is established to the satisfaction of the City that a particular standard or provision contained within this Policy is unnecessary, unreasonable, or undesirable in the circumstances of the case, the City may at its discretion, vary the standard or provision

Legislation	Local Government Act 1995 Planning and Development Act 2005 Planning and Development (Local Planning Schemes) Regulations 2015
Related Policies	State Planning Policy 1 – State Planning Framework. State Planning Policy 3.6 – Development Contributions for Infrastructure. Local Planning Policy 24 – Development Contribution Areas.
Adopted	17 December 2019 OCM 286/2019, OCM 107/2023, OCM 177/2023
Reviewed	12 December 2023
Next Review Date	2025