

 <p>Serpentine Jarrahdale Shire</p>	<p><b>DRAFT LOCAL PLANNING POLICY NO.55</b> Interim Development Contributions (Eastern Byford)</p> <p>DRAFT VERSION: 2 UPDATED: 23 August 2010 FILE: A1912 TRIM:</p>
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## 1.0 Policy Objectives

The objectives of this Policy are to:

- *To clearly outline the Shire of Serpentine Jarrahdale's (the Shire) expectation in regards to satisfactory arrangements being established for contributions prior to formal gazettal of the Byford Development Contribution Arrangement (DCA).*
- *To identify the Shire's position with regard to interim development contribution arrangements prior to the finalisation of the Byford DCA.*
- *To identify the Shire's position with regard to requests for the refunding of development contributions prior to the finalisation of the Byford DCA.*

## 2.0 Background and Application

When development or subdivision occurs within the Byford DCA as identified under the Shire's Town Planning Scheme No. 2 (TPS2), landowners are generally required to make a cost contribution.

The Shire has made significant progress to finalise the Byford DCA. The Shire aims to further progress the DCA through its relevant statutory processes, and that the Minister for Planning ultimately gazette the DCA at its earliest possible convenience. Council, at a Special Meeting held on 15 December 2009 formally considered infrastructure, estimated development contribution rates and underlying principles of the DCA. Preliminary calculations have been undertaken to establish estimated cost contribution rates that can be applied during the interim period prior to gazettal of the DCA.

In the interim, until such time as the DCA is finalised, TPS2 provides for other arrangements, satisfactory to the Shire, being established to achieve cost contributions. Other arrangements have historically been in the form of a legal agreement referred to as an Interim Development Contribution Arrangement (IDCA). The 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 the formal gazettal of the DCA. Through this Policy, the Shire provides guidance to landowners as to what it deems to be a satisfactory arrangement.

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

Over many years, subdivision and development has occurred prior to the gazettal of the DCA. IDCA's have been established with estimated development contribution rates determined on the best available information to the Shire at that given point in time. Since the establishment of the first IDCA, numerous reviews of the DCA have taken

place and thus cost estimates have evolved over time. For this reason, Council at a Special Meeting of 29 January 2010 considered interim refunds to those developers that had entered into IDCA's based on previous cost estimates that were substantially higher than those considered by Council in December 2009. The Shire resolved to consider the provision of partial interim refunds. This policy provides Council guidance in taking this approach which endeavours to ensure fairness and consistency amongst past and future subdividers.

### **3.0 Area of Application**

The provisions of this Policy apply to Development Contribution Plan Area C of the Byford Development Contribution Areas (See Figure 1).

## **4.0 Specific Policy Requirements for Interim Development Contributions**

### **4.1 Subdivision and Development Approvals**

- 4.1.1 In the instance of subdivision applications in the Policy area, in considering recommending approval of a subdivision application to the Western Australian Planning Commission (WAPC), the Shire will generally recommend a condition of approval requiring satisfactory arrangements being entered into with the Shire for the provision of an IDCA for the Byford Development Contribution Area. The Shire 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 Shire's TPS 2 and those of this Policy.
- 4.1.2 In the instance of development applications in the Policy area, in approving an application, the Shire will generally impose a condition of approval requiring satisfactory arrangements being entered into with the Shire for the provision of an IDCA for the Byford Development Contribution Area. The Shire will also generally provide an advice note with the approval stating that the IDCA will be made pursuant to the provisions of the Shire's TPS 2 and those of this Policy.

### **4.2 Information Required to Seek Clearance of Conditions**

- 4.2.1 In applying to the Shire for clearance of conditions of subdivision and/or development a landowner, an applicant is required to follow the following process:
  - Engage the Shire's legal representatives, or another appropriate legal representative, to prepare the requisite legal documentation; and
  - Seek the Shire's endorsement of the requisite legal documentation.
- 4.2.2 The legal documentation will generally consist of a legal agreement between the landowner and the Shire.

### **4.3 Required Content of Legal Agreement**

- 4.3.1 To comply with a condition requiring an IDCA, the Shire will require the legal agreement to address the following matters:
  - The payment of an interim development contribution amount to Council based on the latest available estimate cost contribution rate.

- The provision of additional security to the value of not less than 50 percent of the estimate cost contribution rate. This payment will generally be in the form of a cash payment or a bank guarantee.

#### *4.4 Estimated Cost Contribution*

- 4.4.1 The latest available estimated cost contribution rate will be the latest rate adopted by Council for the purposes of calculating interim development contributions.

#### *4.5 Legal Costs*

- 4.5.1 All direct and indirect costs associated with the preparation and finalisation of the requisite legal documentation for an interim development contribution are to be borne by the landowner.

### **5.0 Specific Policy Requirements for Interim Development Contribution Refunds**

#### *5.1 Applicability*

- 5.1.1 Where an applicant has previously made an IDCA, they may request the Shire in writing for the provision of an interim refund.
- 5.1.2 An interim refund will generally only be granted so long as the funds/security provided at payment of the interim development contribution is more than what the current interim development contribution amount and security is based on the latest available estimated development contribution rate and level of additional security required by this Policy.

#### *5.2 Process*

- 5.2.1 In seeking an interim development contribution refund, the applicant is required to:

Write to the Shire and supply information including:

- The subdivision or development approval;
- Any legal or other agreements entered into the Shire regarding the payment of an interim development contribution and additional security;
- Correspondence from the Shire or WAPC indicating clearance of the condition of subdivision or development requiring an interim development contribution payment;
- Documentation indicating the interim development contribution amount previously paid and the additional security provided;
- A calculation of the development contribution rate and additional security which would be applicable at the time of applying to the Shire for an interim development contribution refund;
- An identification of the amount being sought as an interim refund.

- 5.2.2 The Shire will consider the information provided and advise the applicant in writing of whether it provides in-principle support or will not provide an interim refund. If the Shire advises that it will not provide an interim refund, the Shire will provide reasons to the applicant.

5.2.3 Should the Shire provide in-principle support in writing to an applicant, the applicant is generally required to follow the following process:

- Engage the Shire's legal representatives, or another appropriate legal representative, to prepare the requisite supplementary legal documentation; and
- Seek the Shire's endorsement of the requisite legal documentation.

5.2.4 The legal documentation will generally consist of a legal agreement between the applicant and the Shire.

5.2.5 Once finalised, and pending the availability of finances, the Shire will provide the applicant with the agreed interim development contribution refund.

### *5.3 Legal Costs*

5.3.1 All direct and indirect costs associated with the preparation and finalisation of the supplementary legal documentation for an interim development contribution refund are to be borne by the applicant.

### *5.4 Limitations*

5.4.1 Only one application for an interim refund may be made per subdivision or development application.

# PLAN 16A BYFORD DEVELOPMENT CONTRIBUTION AREAS

[amended by No. 152, GG 15/02/2008]

