

Extract from Minutes of Council Meeting – 26 July 2010

OCM001/07/10 COUNCIL DECISION

Moved Cr Hoyer, seconded Cr Randall

That:

1. The Council of the Shire of Serpentine Jarrahdale, under Section 75 and by virtue of the power conferred upon it in that behalf by the Planning and Development Act 2005 (as amended), hereby amends Town Planning Scheme No. 2 by:
 - (a) Removing Clause 5.19 Development Contribution Areas from the Scheme.
 - (b) Removing the following definitions from Appendix 1 – Interpretations of the Scheme:

‘Common Infrastructure – means any components or services jointly required by all owners of land within a Structure Plan, which are, in the opinion of Council, essential to facilitate the subdivision or development of that land, and which are generally in accordance with the Commission’s Policy on Developer Contributions for Infrastructure.’

‘Common Infrastructure Cost – means the cost of a common infrastructure item of any area required to be contributed by the owner’s subdividing or otherwise developing land within that area;’

‘Contribution Agreement – means a set of provisions defining the common infrastructure costs applicable to an area and the method of apportioning those costs between owner’s in the area, incorporated in the Appendix 16 as an amendment to the Scheme;’

‘Cost Contribution – means the contribution to the cost of Infrastructure payable by an Owner under clause 5.19 and the applicable Development Contribution Plan;’

‘Infrastructure – means services and facilities which, in accordance with the Commission’s policy, it is reasonable for owners to make a Cost Contribution towards;’

‘Owner – means an owner of land that is located within a Development Contribution Area;’
 - (c) Renumbering Clause 5.20 of the Scheme to:
‘5.19’
 - (d) Renumbering Clause 5.20.1 of the Scheme to:
‘5.19.1’
 - (e) Renumbering Clause 5.20.2 of the Scheme to:
‘5.19.2’
 - (f) Renumbering Clause 5.20.3 of the Scheme to:
‘5.19.3’
 - (g) Renumber the reference to Clauses 5.20.1 in the text notes of Table 1 – Zoning Table to:
‘5.19.1’

- (h) Renumber the reference to Clauses 5.20.3 in the text notes of Table 1 – Zoning Table to:
'5.19.3'
- (i) Adding the symbol (a) prior to the text Poultry Farm Special Control Area under Clause 10.1.1 of the Scheme, to read:
'(a) Poultry Farm Special Control Area'
- (j) Adding the following text into sub-clause 10.1.1 of the Scheme after sub-clause 10.1.1(a) Poultry Farm Special Control Area:
'(b) development contribution areas shown on the scheme map as DCA with a number and included in Appendix 16.'
- (k) Adding the following text into the Scheme following Clause 10.2 Poultry Farm Special Control Area:
'10.3 Development contribution areas

10.3.1 Interpretation

In clause 10.3, unless the context otherwise requires:

'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 and such costs as are reasonably incurred by the local government for the preparation and implementation of any structure plan applicable to the development contribution area.

'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, and the administrative matters required to be carried out by or on behalf of the local government in order to prepare and implement any structure plan applicable to the development contribution area.

'Cost apportionment schedule' means a schedule prepared and distributed in accordance with clause 10.3.10.

'Cost contribution' means the contribution to the cost of infrastructure and administrative costs.

'Development contribution area' means an area shown on the scheme map as DCA with a number and included in Appendix 16.

'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 clause 10 of the scheme (as incorporated in Appendix 16 to this scheme).

'Development contribution plan report' means a report prepared and distributed in accordance with clause 10.3.10.

'Infrastructure' means the standard infrastructure items (services and facilities set out in appendix 1 of 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.

'Local government' means the local government or local governments in which the development contribution area is located or through which the services and facilities are provided.

'Owner' means an owner of land that is located within a development contribution area.

10.3.2 Purpose

The purpose of having development contribution areas is to:

- (a) provide for the equitable sharing of the costs of infrastructure and administrative costs between owners;*
- (b) ensure that cost contributions are reasonably required as a result of the subdivision and development of land in the development contribution area; and*
- (c) coordinate the timely provision of Infrastructure.*

10.3.3 Development contribution plan required

A development contribution plan is required to be prepared for each development contribution area.

10.3.4 Development contribution plan part of scheme

The development contribution plan is incorporated in Appendix 16 as part of this scheme.

10.3.5 Subdivision, strata subdivision and development

10.3.5.1 The local government shall not withhold its support for subdivision, strata subdivision or refuse to approve a development solely for the reason that a development contribution plan is not in effect, there is no approval to advertise a development contribution plan, or that there is no other arrangement with respect to an owner's contribution towards the provision of community infrastructure.

10.3.5.2 Where a local government has received consent to advertise a development contribution plan, land within that development contribution area will be considered to be subject to a development contribution plan.

10.3.5.3 Where a development contribution plan is required but not yet in effect or a local government has received consent to advertise a development contribution plan, the local government may recommend conditions of subdivision or strata subdivision approval or impose conditions of a development approval requiring the owner to make other interim arrangements, satisfactory to the local government, with respect to the owner's contribution toward the provision of infrastructure, land and administrative items and costs in a development contribution area.

10.3.6 Guiding principles for development contribution plans

The development contribution plan for any development contribution area is to be prepared in accordance with the following principles:

(a) Need and the nexus

The need for the infrastructure included in the 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 levied 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 cost adjustments determined 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

Owners 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 calculation of the costs of the contributions is not reasonable.

(h) Accountable

There must be accountability in the manner in which development contributions are determined and expended.

(i) Risk Minimisation

The financial risk to the local government and other stakeholders is to be mitigated through the minimisation of items included.

10.3.7 Recommended content of development contribution plans

10.3.7.1 The development contribution plan is to specify:

(a) the development contribution area to which the development contribution plan applies;

(b) the infrastructure and administrative items 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.

10.3.8 Period of development contribution plan

A development contribution plan shall specify the period during which it is to operate.

10.3.9 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 under the Metropolitan Region Scheme as primary regional roads and other regional roads;**
- (b) existing public open space;**
- (c) existing government primary and secondary schools; and**
- (d) such other land as is set out in the development contribution plan, is to be excluded.**

10.3.10 Development contribution plan report and cost apportionment schedule

10.3.10.1 Within 90 days of the development contribution plan coming into effect, the local government is to adopt and make available a development contribution plan report and cost apportionment schedule to all owners in the development contribution area.

10.3.10.2 The development contribution plan report and the cost apportionment schedule shall set out in detail the calculation of the cost contribution for each owner in the development contribution area, based on the methodology provided in the development contribution plan, and shall take into account any proposed staging of the development.

10.3.10.3 The development contribution plan report and the cost apportionment schedule do not form part of the scheme, but once adopted by the local government they are subject to review as provided under clause 10.3.11.

10.3.11 Cost contributions based on estimates

10.3.11.1 The determination of Infrastructure costs and administrative costs is to be based on amounts expended, but when expenditure has not occurred, it is to be based on the best and latest estimated costs available to the local government and adjusted accordingly, if necessary.

10.3.11.2 Where a cost apportionment schedule contains estimated costs, such estimated costs are to be reviewed at least annually by the local government:

(a) in the case of land to be acquired, in accordance with clause 10.3.12; and

(b) in all other cases, in accordance with the best and latest information available to the local government, until the expenditure on the relevant item of infrastructure or administrative costs has occurred.

10.3.11.3 The local government is to have such estimated costs independently certified by appropriate qualified persons and must provide such independent certification to an owner when requested to do so.

10.3.11.4 Where any cost contribution has been calculated on the basis of an estimated cost, the local government:

(a) is to adjust the cost contribution of any owner in accordance with the revised estimated costs; and

(b) may accept a cost contribution, based upon estimated costs, as a final cost contribution and enter into an agreement with the owner accordingly.

10.3.11.5 Where an owner's cost contribution is adjusted under clause 10.3.11.4, the local government, 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.

10.3.11.6 If an owner objects to the amount of a cost contribution, the owner may give notice to the local government requesting a review of the amount of the cost contribution by an appropriate qualified person

(‘independent expert’) agreed by the local government and the owner at the owner’s expense, within 28 days after being informed of the cost contribution.

10.3.11.7 If the independent expert does not change the cost contribution to a figure acceptable to the owner, the cost contribution is to be determined:

(a) by any method agreed between the local government and the owner; or

(b) if the local government and the owner cannot agree on a method pursuant to (a) or on an independent expert, by arbitration in accordance with the Commercial Arbitration Act 1985, with the costs to be shared equally between the local government and owner.

10.3.12 Valuation

10.3.12.1 Unless Part 10 of the Land Administration Act 1997 applies, clause 10.3.12 applies if it is necessary to ascertain the value of any land for the purposes of clause 10.3.

10.3.12.2 In clause 10.3.12:

“Value” means the capital sum which an unencumbered estate in fee simple of the land might reasonably be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would require:

(a) on the basis that there are no buildings, fences or other improvements of a like nature on the land;

(b) on the assumption that any rezoning necessary for the purpose of the development has come into force;

(c) taking into account the added value of all other improvements on or appurtenant to the land.

‘Valuer’ means a licensed valuer agreed by the local government and the owner, or, where the local government and the owner are unable to reach agreement, by a valuer appointed by the President of the Western Australian Division of the Australian Property Institute.

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

10.3.12.4 If, following a review, the valuer’s determination of the value of the land is still not a figure acceptable to the owner, the value is to be determined:

(a) by any method agreed between the local government and the owner; or

(b) if the local government and the owner cannot agree, the owner may apply to the State Administrative Tribunal for a review of the matter under part 14 of the Planning and Development Act 2005.

10.3.13 Liability for cost contributions

10.3.13.1 An owner must make a cost contribution in accordance with the applicable development contribution plan and the provisions of clause 10.3.

10.3.13.2 An owner’s liability to pay the owner’s cost contribution to the local government arises on the earlier of:

(a) the Western Australian Planning Commission endorsing its approval on the deposited plan or survey strata plan of the subdivision of the owner’s land within the development contribution area;

- (b) the commencement of any development on the owner's land within the development contribution area;**
- (c) the approval of any strata plan by the local government or Western Australian Planning Commission on the owner's land within the development contribution area; or**
- (d) the approval of a change or extension of use by the local government on the owner's land within the development contribution area.**

The liability arises only once upon the earliest of the above listed events.

10.3.13.3 Notwithstanding clause 10.3.13.2, an owner's liability to pay the owner's cost contribution does not arise if the owner commences development of:

- (a) the first single house or outbuildings associated with that first single house on an existing lot which has not been subdivided or strata subdivided since the coming into effect of the development contribution plan;**
- (b) a single dwelling on a single lot and associated outbuildings;**
- (c) a change of use where no development is proposed;**
- (d) a development which is defined as 'public works' under the Public Works Act 1902;**
- (e) a fence;**
- (f) a home business;**
- (g) a home occupation;**
- (h) a home office; or**
- (i) any development which is permitted and excluded from the requirement for planning consent pursuant to clause 5.1.2.**

10.3.13.4 Where a development contribution plan expires in accordance with clause 10.3.8, an owner's liability to pay the owner's cost contribution under that development contribution plan shall be deemed to continue in effect and be carried over into any subsequent development contribution plan which includes the owner's land, subject to such liability.

10.3.14 Payment of cost contribution

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

- (a) cheque or cash;**
- (b) transferring to the local government or a public authority land in satisfaction of the cost contribution;**
- (c) the provision of physical infrastructure;**
- (d) some other method acceptable to the local government; or**
- (e) any combination of these methods.**

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

10.3.14.3 Payment by an owner of the cost contribution, including a cost contribution based upon estimated costs in a manner acceptable to the local government, constitutes full and final discharge of the owner's liability under the development contribution plan and the local government shall provide certification in writing to the owner of such discharge if requested by the owner.

10.3.15 Charge on land

10.3.15.1 The amount of any cost contribution for which an owner is liable under clause 10.3.13, but has not paid, is a charge on the owner's

land to which the cost contribution relates, and the local government may lodge a caveat, at the owner's expense, against the owner's certificate of title to that land.

10.3.15.2 The local government, at the owner's expense and subject to such other conditions as the local government thinks fit, can withdraw a caveat lodged under clause 10.3.15.1 to permit a dealing and may then re-lodge the caveat to prevent further dealings.

10.3.15.3 If the cost contribution is paid in full, the local government, if requested to do so by the owner and at the expense of the owner, is to withdraw any caveat lodged under clause 10.3.15.

10.3.16 Administration of funds

10.3.16.1 The local government 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 infrastructure costs 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.

10.3.16.2 Interest earned on cost contributions credited to a reserve account in accordance with clause 10.3.16.1 is to be applied in the development contribution area to which the reserve account relates.

10.3.16.3 The local government 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.

10.3.17 Shortfall or excess in cost contributions

10.3.17.1 If there is a shortfall in the total of cost contributions when all cost contributions have been made or accounted for in a particular development contribution area, the local government 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 in paragraph 10.3.17.1(a) restricts the right or power of the local government to impose a differential rate to a specified development contribution area in that regard.

10.3.17.2 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 local government is to refund the excess funds to contributing owners for that development contribution area. To the extent, if any, that it is not reasonably practicable to identify owners and/or their entitled amount of refund, any excess in funds shall be applied, to the provision of additional facilities or improvements in that development contribution area.

10.3.18 Powers of the local government

The local government in implementing the development contribution plan has the power to:

(a) acquire any land 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.

10.3.19 Arbitration

Subject to clauses 10.3.12.3 and 10.3.12.4, any dispute between an owner and the local government 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.'

- (l) Deleting the following text from Appendix 16 of the Scheme:

'Area

(see clause 5.19 and Appendix 16)

Common Infrastructure

(see clause 5.19)

Detail of Contribution

Arrangement for Area

(see clause 5.19)'

2. That the Council of the Shire of Serpentine Jarrahdale forward Amendment No. 167 to Town Planning Scheme No. 2 to the Environmental Protection Authority for comment, pursuant to Section 81 of the Planning and Development Act (2005) and the Western Australian Planning Commission for information, and subject to no objections being received from the Environmental Protection Authority and acknowledgement being received from the Western Australian Planning Commission, the amendment be advertised for public comment pursuant to Regulation 25(2) of the Town Planning Regulations (1967) for a period of 42 days to the satisfaction of the Director Development Services.

CARRIED 10/0

Council Note: Council acknowledges the significant work and expertise involved in the preparation of this item.