



DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT

2 February 2010

DSDS3	DRAFT LOCAL DEVELOPMENT CONTRIBUTION GUIDELINES	FILE: 556 BP/RBP	{Folio No. *}
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SUMMARY:

Reporting to Council that the Department of Planning has placed on public exhibition the *Draft Local Development Contributions Guidelines*.

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BACKGROUND:

The Department of Planning has prepared the *Draft Local Development Contribution Guidelines* which are currently on public exhibition until 26 February 2010.

This Report provides information to Council regarding the key changes under the proposed legislation in the preparation and administration of developer contributions for local community infrastructure, previously referred to as Section 94 Contributions.

Purpose of the Guidelines

The Guidelines have been provided to assist Councils in the preparation of planning agreements, direct contribution plans (previously referred to as s.94 plans) and indirect contributions plans (previously referred to as s.94A plans) under Part 5B.

Part 5B of the Act establishes the legislative provisions for the levying of development contributions by:

- establishing a strategic framework for the Minister, Department, councils and other planning authorities by setting out key considerations for determining, collecting and then spending contributions;
- permitting councils to take contributions for community infrastructure subject to new accounting requirements;
- establishing a two tier system for local contributions whereby councils may continue to levy for contributions on key community infrastructure without Ministerial approval, or where additional community infrastructure is required, seek approval from the Minister through demonstrating a business plan and independent assessment of the proposed infrastructure;

- preventing double dipping by allowing only one contribution type, either direct or indirect, but not both to operate over a particular development;
- allowing variations in the indirect contribution levy via Ministers approval;
- improving reporting requirements on collection and expenditure of contributions; and
- retaining council's role in control and management of contributions.

Preparation of Contribution Plans under Part 5B.

Principle issues to be addressed when levying a developer contribution under Part 5B, and in the preparation of plans, are outlined in the Guidelines.

Included on the list of changes to the former legislation, the most important in terms of the potential effect on a council's authority to demand a contribution, with an attendant effect on council cash flows, are outlined as follows:

a) Key considerations to be addressed in preparing contribution plans

As previously required under s.94 of the Act, councils are directed under Part 5B (s.116D) to address key considerations for development contributions prior to introducing new development contributions plans or planning agreements. However, councils will now be required to provide a response demonstrating that due regard has been paid to the considerations. This response is to be exhibited with the draft contribution plan or planning agreement.

b) Definition of Key Community Infrastructure

Community infrastructures for which contributions may be levied without Ministerial approval are defined under cl.31A(1) of the Environmental Planning and Assessment Regulation 2000 (the Regulation). These are generally facilities and infrastructure that have a clearly local function and can be directly linked to the contributing development, or may have a district significance that includes the local contributing catchment. The Guidelines define a local or district service catchment as "being equal to or smaller than the local government area." Types of infrastructure that have a service catchment extending beyond the local government area are not deemed key community infrastructure under the proposed Legislation. Notwithstanding, councils will retain the opportunity to levy contributions either through cross boundary contribution plans, or through Ministerial approval.

c) Definition of Non Compliant Infrastructure

Under the Legislation, community infrastructure that does not comprise buildings or works, for example rescue equipment, books, computers, is not key community infrastructure unless it is deemed as being part of a necessary fit-out associated with a built key community infrastructure, such as a library. With regard to provision of emergency services such as surf life saving, rural fire services and SES, contributions can only be levied for buildings and not for vehicles or equipment.

d) Status of Existing s.94 Contribution Plans

It has been indicated by the Department of Planning that existing contribution plans prepared under s.94 will be automatically repealed eighteen (18) months from the date of commencement of

Part 5B. All current plans must, by that time, comply with the provisions of Part 5B. While no date for proclamation of the Act has been announced, it is considered likely to occur prior to 30 June this year.

e) Planning Agreements

The application of planning agreements between a Council and developer is no longer bound to being instigated by the developer as a voluntary planning agreement, thereby providing for greater flexibility in achieving tailored development and public benefit outcomes.

f) Recognition of Council Resources

A significant departure from the previous Legislation is the acknowledgement in the Guidelines of the resource burden the preparation and administration of contribution plans places on councils and that staff employed in the planning, preparation and administration of contribution plans are recognised as key community infrastructure and can therefore be resourced through developer contributions.

CONCLUSION:

The impending Part 5B Legislation will require Council to amend the current section 94 developer contribution plans to reflect the changes, however the plans adopted after 2007 are likely to require only minor amendments to include the new reporting arrangements. The current contribution plans prepared under s.94 of the Act are likely to remain in force for an eighteen month transitional period after the Part 5B legislation commences, however all new contribution plans prepared from now on should be developed to include all the requirements outlined in the Draft Guidelines to ensure future compliance.

RECOMMENDATION IMPLICATIONS:

- *Environmental*

Nil

- *Social*

Nil

- *Economic (Financial)*

Nil

- *Policy or Statutory*

The requirement to develop more detailed plans will have an impact on resources in terms of staffing.

RECOMMENDATION:

That the information be noted.

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R B Pitt

DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES