
Item: 13.02**Subject: POLICY REVIEW - DEVELOPMENT CONTRIBUTIONS
ASSESSMENT POLICY****Presented by: Community, Planning and Environment, Melissa Watkins**

Alignment with Delivery Program

4.5.2 Plan for infrastructure that supports population growth.

RECOMMENDATION**That Council:**

- 1. Publicly exhibit the revised draft Development Contributions Assessment Policy for a period of not less than 28 days.**
- 2. Note that a further report will be tabled at the June 2024 meeting of Council after the public exhibition period, detailing any submissions received from the public during the exhibition period.**

Executive Summary

An important component of public sector governance is establishing key policies and ensuring they are clear, available, regularly updated and monitored for compliance.

The Development Contributions Assessment Policy (DCAP) was previously amended to address the assessment and payment of development contributions for business and student accommodation developments. The amended DCAP was adopted by Council at the Ordinary meeting of 19 October 2016 and came into effect on 20 October 2016, as provided within Attachment 1. The DCAP indicates that the next review date was to be undertaken by 19 October 2019.

Council is developing a new Local Infrastructure Contributions Plan. This plan is consistent with the Development Contributions Framework noted by Council at the Ordinary Council Meeting of 20 April 2023. The original intent was to complete the new Local Infrastructure Contributions Plan before the related policies were reviewed. However, now it is appropriate to review this policy for clarity and removal of ambiguity while addressing risk for Council. Following the completion of the new Local Infrastructure Contributions Plan this policy may require a further administrative review to ensure alignment.

This Policy has been revised for consideration by Council and it is recommended that this Policy as provided within Attachment 2, be endorsed by Council and placed on public exhibition for a minimum period of 28 days.

Discussion

This Policy aims to provide a relationship between the contributions levied for residential, commercial, and industrial development under Council's Development Contribution Plans and Development Servicing Plans (DSP).

A new development contributions plan is currently being prepared in accordance with the *Environmental Planning and Assessment Act 1979*, the Development Contributions Practice Notes, Ministerial Directions issued by the Department of Planning and Environment and GLN Planning consultancy advice and assessment of the present state of Port Macquarie-Hastings Contributions Planning. The intent of the new plan, in accordance with Council's framework is to have a more consistent and simplified approach. This will enable Council to respond appropriately to the anticipated population growth within the LGA.

The current DCAP was adopted on 20 October 2016 and indicates that the next review date is 19 October 2019.

The current DCAP has not been reviewed since 2016, and since its adoption and since that time:

- References to specific sections and definitions within the Act and Regs have changed;
- The notice of payment re-issue fee needs to be aligned with the Fees and Charges;
- The guidelines for not-for-profit organisations has been developed;
- contributions offsets for ecological sustainable development have not been utilised; and
- The direction for deferral deeds has also changed.

The objective of this review is to create a more robust and succinct contributions policy that is easier to interpret.

The review of the DCAP has not proposed any changes to the DSP Charges, contribution rates or contribution plans. The production of a new Development Servicing Plan is a separate activity being undertaken by Council and will be reported to Council at appropriate milestones.

Main Changes

The main changes to the DCAP involves clause 24 and 27, as follows:

1. Contribution Offsets for Ecologically Sustainable Development

One of the main changes to the DCAP is to delete Clause 2.4 Contribution Offsets for Ecologically Sustainable Development (ESD).

The aim of this clause is to encourage a level of ESD that exceeds current legislative requirements, of which the development would receive contribution offsets. Under this clause, ESD *means residential subdivision for permanent occupants of at least 50 residents where the development can demonstrate reduced water and energy consumption as provided by table 1*. Table 1 refers to reduced water and energy consumption in relation to BASIX (Building Sustainability Index). It should be noted that BASIX only relates to residential building development and does not apply to subdivision.

A review of Council's records indicates that no development has utilised the provisions of this clause since its inception. This could be due to:

- the definition of ESD not being clear and the referred table makes a link to BASIX of which subdivisions are not applicable; or

- developers not having an appetite to commit to the reduction of water and energy consumption in residential development, greater than the legislative requirements (BASIX); or
- developers are undertaking greenfield subdivisions, not house and land packages.

As there is no desire for the incentives within clause 2.4, it is recommended that this clause be deleted.

2. Deferral of Payment of Development Contributions

One of the main changes to the DCAP is in relation to clause 2.7, the deferral of payment of development contributions.

The provision for the deferral of the payment of development contributions was first introduced into the DCAP with the adoption of the amended DCAP at Council's meeting of 16 July 2014.

Clause 2.7 of the DCAP allows the deferral of the payment of development contributions in relation to residential and rural residential subdivision, building works and other development not involving subdivision for a period of up to two years subject several provisions. If Council agrees to the deferral of the payment of development contributions the developer needs to enter into a deed of deferral.

Since the inclusion of clause 2.7 into the DCAP, the majority of developments utilising the deferral of the payment of development contributions are greenfield subdivisions. If Council supports the entering into a deed, the developer needs to pay the outstanding contributions prior to the sale of the lot and the outstanding contributions are to be secured by either:

- bank guarantee; or
- charge on land; or
- caveat on each individual lot; or
- voluntary planning agreement.

The majority of deeds have utilised the registration of a caveat onto the title of each individual lot within the subdivision.

The use of this clause has identified a risk to Council in the use of a caveat on the title of each lot as a security. If the developer does not pay the outstanding deferred development contributions within two years, Council has no legal mechanism to obtain the outstanding deferred development contributions.

At present, there is \$1,312,863.80 in deferred development contributions. Of this amount, \$879,633.20 is outstanding since 17 August 2023 and is associated with one development application.

The non-payment of outstanding development contributions within two years of entering into the deed, is a risk to Council that is realised at times, particularly when land lots do not sell in the deferral period and the developer is reliant on the sale proceeds to pay the development contributions. Attachment 3 indicates the current outstanding and overdue deferred development contributions, as well as the overdue deferred development contributions since March 2020.

Due to the issues regarding non-payment of the deferred development contributions within the required timeframe and Council having limitations to collect those outstanding deferred development contributions, it is proposed to change clause 2.7 as follows:

- more details on how to apply for, and the criteria of acceptable circumstances to defer the payment of development contributions;
- the only security is a bank guarantee. This bank guarantee shall be for the total development contribution amount plus 10% of the total amount of the development contribution;
- administration fee to cover processing the bank guarantee;
- the deferred amount shall be reduced from 2 years to 1 year;
- the total amount of contributions that is proposed to be deferred is to be no less than \$100,000;
- the bank guarantee can be utilised if the outstanding deferred development contributions are not paid within 1 year;
- requires condition on development consent;
- development consents issued on or after 16 July 2014 and still valid, will be able to apply to defer the payment of their development contributions;
- the certifying authority is to verify the payment of the outstanding deferred development contributions prior to issuing the construction certificate, occupation certificate or subdivision certificate.

The proposed changes to clause 2.7 of the DCAP will minimise the risk to Council in terms of collecting outstanding deferred development contributions, and provide a mechanism to collect those outstanding monies.

In addition, the removal of the security option of a caveat on each lot, will also reduce the administrative burden on the Development Contributions Team. When the developer requests to defer the payment of their development contributions, the following processing times are required for the following administrative tasks:

- Deed of deferral preparation:
 - simple application - 8 hours;
 - complex application - 12 hours
- Administration per lot (including removal of caveat and creating individual notice of payment):
 - simple - 3 hours;
 - complex - 4 hours

The changes proposed to this Policy are indicated in the table below:

Current Policy	Changes Proposed to Draft Policy
Title - Development Contributions Assessment Policy	Title changed to Development Contributions Administration Policy
Various clauses	Various clauses have been amended to reflect the sections in the new <i>Environmental Planning and Assessment Act 1979</i> (Act) and <i>Environmental Planning and Assessment Regulation 2000</i> (Regs).
1. Introduction	Amended to explain development contributions and include details of the purpose of the policy.
2. Policy Statement and Scope	Amended to reflect current legislation.
2.1 Contribution Rates	No changes.

2.2 Short Term or Emergency Accommodation	Removed wording 'short-term' as this clause is related to emergency accommodation. Amended 'Development Contributions Plans' to "Local Infrastructure Contributions Plans' as this is now the correct description.
2.3 Development by Non-Profit Organisations	Amended to include reference to the Australian Charities and Not-for-Profits Commission and their requirements of classification for a not-for-profit.
2.4 Contribution Offsets for Ecologically Sustainable Development	This clause and sub-clauses deleted.
2.5 Secondary Dwellings ("Granny Flats")	Amended to reflect current legislation.
2.6 Indexation and Recalculation of Contributions	Dot point 2 amended to remove \$25 fee and refer to Council's Fees and Charges, as this fee will increase overtime.
2.7 Deferral of Payment of Development Contributions	Amended to: <ul style="list-style-type: none"> • provide more details on how to apply for, and the criteria required for the deferral payment of development contributions; • require a bank guarantee only; • reduce the timeframe from 2 years to 1 year, with no extension; • require total contributions to be not less than \$100,000; • require bank guarantee to be for total contribution plus 10% of total value of contribution to be deferred; • an administration fee to cover processing bank guarantee; • require a condition on the development consent; • include provision that if contributions not paid within 12 months, Council can request the bank pay the full amount guaranteed by the bank guarantee; and • include provision that certifying authority must not issue construction certificate, subdivision certificate or occupation certificate unless obligations of the deferred development contributions have been satisfied and verified.
2.8 Student Accommodation	Consolidated into clause 2.7.
2.9 Non Residential Accommodation	Consolidated into clause 2.7.
3. Responsibilities and Authorities	No changes.
3.1 Roles and Responsibilities	No changes.

3.2 Determination of Applications for Exemption	Amended to reflect correct Director.
3.3 Support and Advice	No changes.
3.4 Review	Amended to include more parameters as to when the Policy is to be reviewed.
3.5 Not in current Policy	Added to include details of approval and revision.
4. References	Amended to reflect current legislation.
5. Definitions	Bed and breakfast - amended to reflect definition and clause 5.4 in LEP. Student accommodation - amended to reflect legislative change.
6. Process Owner	Moved into clause 3.5.
7. Amendments	Moved into clause 3.5.

The adopted Policy is included here as Attachment 1 while the revised draft Policy is included here as Attachment 2.

Options

Council has the options to:

1. Adopt the draft Development Contributions Administration Policy for exhibition;
or
2. Request or make further amendments to this Policy, noting this may delay exhibition; or
3. Not adopt the recommendation and resolve in some other fashion.

This report recommends Option 1, endorsement of the draft Policy for the purposes of public exhibition.

Community Engagement and Internal Consultation

Community Engagement

It is recommended that this Policy be placed on public exhibition for not less than 28 days.

Internal Consultation

Internal consultation was undertaken with the Utilities, Planning and Design and Development Assessment teams.

During public exhibition, further consultation will be undertaken with the following internal stakeholders:

- Business and Performance;
- Community Infrastructure, Planning and Design;
- Development Assessment Team;
- Development Engineering Team;
- Natural Resources Management Team;
- Recreation and Community Team;
- Utilities, Planning and Design.

Planning and Policy Implications

The draft DCAP proposes substantial changes that will become new policy subject to Council's decision on the matters raised in this report. The proposed changes will ensure compliance with current legislation; remove provisions that have not been utilised; and amend clauses to ensure Council receives the required development contributions associated with development in the Port Macquarie-Hastings Local Government Area (LGA); and provide legal mechanisms if deferred development contributions are outstanding.

Financial and Economic Implications

The provisions within the DCAP are to ensure that Council receives the development contributions associated with development, so that these monies can be allocated to, and enable identified projects within the LGA to be constructed, providing positive financial and economic implications.

The review of the DCAP seek to limit and reduce financial risk to Council associated with the non-payment of contributions relating to Council's contributions deferral policy.

Attachments

1. Current Development Contributions Assessment Policy
2. Draft Development Contributions Assessment Policy
3. Outstanding Deferred Contributions Summary Report