

# Development Contributions Guidelines

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# Development Contributions

Welcome to the Development Contributions Guidelines.

- What are the [Development Contributions Guidelines]?
- What is the [purpose of the guidelines]?
- [How does the transfer to DSE affect the guidelines?]
- [Contacting us]



## Development Contributions Guidelines

The Development Contributions Guidelines are a guide for the appropriate and practical application of the development contributions system.

The guidelines contain new principles and methodology for preparing Development Contribution Plans (DCPs), which can be applied under Part 3B of the [Planning and Environment Act 1987].

When preparing a DCP a planning authority should also have regard to the [Ministerial Direction] for preparing DCPs.

For historical information, please refer to the [Review of development contributions] page.

## Purpose of the guidelines

The guidelines are intended to:

- provide councils, developers and infrastructure agencies with a clear explanation of the development contributions system
- offer practical advice to councils wishing to prepare and implement a DCP for the purpose of levying development contributions
- cover development contributions for a range of land use and infrastructure types, and
- provide a context for the legislative provisions in the Planning and Environment Act 1987.

Open the [Development Contributions Guidelines] website.

## How does transfer to DSE affect the guidelines?

Following changes to the Victorian Government Departments, the Planning area of the Department of Infrastructure (DOI) has been transferred to the new Department of Sustainability and Environment (DSE). During the transition period the Planning content of this website, including the Development Contributions Guidelines will still be referred to as a DOI **responsibility**.

For further detail regarding the restructure, please refer to the [Changes to DOI] page.

## Contacting us

If you need:

- further information about development contributions, please contact your [local **DSE** regional office].
- help using the Development Contribution Guidelines website, you can visit the:
  - Development Contributions [Help] page, or
  - Development Contributions [Contact us] page for further help.
- to send us feedback about the Development Contributions Guidelines website, visit the [Feedback section] of the Development Contributions Contact us page.

[Join our mailing list] and we will notify you of any updates.

# Introduction to development contributions

## Welcome

Welcome to the Development Contributions Guidelines. Each page of this website contains links in the banner area (top of the page) that provide you with help in using this website. If this is your first visit to the guidelines you may find it helpful to look at the Help link. Other links that you may find useful include the:

- Glossary, which provides definitions of terms used throughout the guidelines
- Site map, which provides a high level overview of how information in the guidelines is organised, and
- Search facility, which enables you to find topics related to your search word.

## How does transfer to DSE affect the guidelines?

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## What are development contributions?

When people develop land for any use, they often contribute to or cause the need for new or upgraded infrastructure.

Development contributions are payments or works-in-kind towards the provision of infrastructure made by the proponent of a new development. The Planning and Environment Act 1987 allows for development contributions to be provided through the:

- planning scheme amendment process
- planning permit process, or
- building permit process.

Development contributions are one of a number of options for funding infrastructure available to local and State government.

## Obtaining development contributions through the planning system

The Planning and Environment Act 1987 provides three mechanisms by which development contributions can be sought and collected through the planning system. They are:

- [Development contributions plans (DCPs)]
- [Conditions on planning permits], and
- [Voluntary agreements].

# **Voluntary agreements**

## **Introduction**

Voluntary agreements provide an alternative mechanism to a DCP for obtaining development contributions towards infrastructure provision. The following guidelines provide information about the use of voluntary agreements for this purpose. They explain:

- [What are voluntary agreements?]
- [When can a voluntary agreement be used?]
- [What can a voluntary agreement provide for?]
- [Where can further information be obtained?]

## **What are voluntary agreements?**

There is an opportunity within the planning system for landowners, the council and other parties to freely negotiate agreements for the provision of infrastructure, at the time a development proposal is considered.

An agreement can be used to place an obligation on the parties to:

- provide infrastructure, and/or
- pay for infrastructure.

Entering into an agreement for development contributions requires all parties to voluntarily agree to commit to their obligations, as set out in the agreement. Therefore, the establishment of a voluntary agreement cannot be a requirement of a planning scheme amendment or planning permit.

Section 173 of the Planning and Environment Act 1987 provides a mechanism for formalising a voluntary agreement between the responsible authority, a landowner, and other parties. The authority that administers the planning scheme is called the responsible authority. It is usually the council.

The agreement is made under seal and its terms, conditions and obligations are binding on the owner and subsequent owners of the land that the agreement affects. The agreement is usually registered on the title to the land that it affects to ensure that the owner of the land at the time will meet any obligations contained within the agreement.

Section 173 agreements are enforceable through Victorian Civil and Administrative Tribunal (VCAT). If a party fails to meet its obligations under the agreement, VCAT may issue an Enforcement Order in response to a request from one of the parties.

In addition to obtaining development contributions for infrastructure provision, the Act allows for section 173 Agreements to be used for a range of matters including:

- regulating the use or development of the land,
- identifying conditions that the use or development of land must meet, and
- advancing the objectives of planning in Victoria, planning schemes and planning scheme amendments.

## **When can a voluntary agreement be used?**

A voluntary agreement in relation to infrastructure provision can be initiated when:

- the council considers a planning scheme amendment request, and
- the council considers a planning permit application.

A voluntary agreement for the provision of infrastructure is appropriate when the parties agree to a mutually acceptable outcome. An acceptable agreement is more likely to be achieved when the circumstances involve a large individual development or a small number of landowners.

## **What can a voluntary agreement provide for?**

A voluntary agreement can provide for:

- the costs and standard of infrastructure provision
- the timing of the provision of infrastructure
- the parties' obligation to provide the infrastructure
- timing of payments towards infrastructure
- the refund of cash contributions if infrastructure is not provided
- the upfront provision of infrastructure by one landowner and the reimbursement of the cost by other landowners as they develop, or
- works-in-kind in lieu of a cash contribution.

## **Where can further information be obtained?**

Detailed information about agreements made under the Planning and Environment Act 1987 is available in the Department of Infrastructure publication [Using Victoria's Planning System].

# Conditions on planning permits

## Introduction

Planning schemes regulate the use and development of land. One way they do this is by requiring that certain types of use or development can only be carried out if a planning permit is granted.

A planning permit:

- is a legal document
- allows a certain use or development to proceed on a specified parcel of land
- is subject to a time limit and will expire under specified circumstances
- contains written conditions, and
- usually has endorsed plans that show how the land can be used or developed.

The proposed use or development must satisfy all the conditions on a planning permit and comply with the endorsed plans. The permission granted relates to the specified parcel of the land regardless of who owns the land.

Planning permit conditions can include requirements for:

- infrastructure to be provided, or
- payments to be made towards the provision of infrastructure.

The following guidelines provide information about the use of planning permit conditions to obtain development contributions. They explain:

- [What conditions can be put on planning permits?]
- [What are the requirements that relate to planning permit conditions for infrastructure provision?]
- [What are works, services and facilities?]
- [When is it appropriate to use a planning permit condition for the payment or provision of infrastructure?]
- [When is it inappropriate to use a planning permit condition for the payment or provision of infrastructure?]
- [Where can further information be obtained?]

## What conditions can be put on planning permits?

The authority that decides planning permit applications is called the responsible authority (RA). The RA is usually the council. When the RA decides to grant a planning permit it usually includes conditions on the permit that have to be complied with.

Section 62 of the Planning and Environment Act 1987 (the Act) sets out the circumstances in which conditions can be included in a permit.

The common law tests require that a planning permit condition must:

- be reasonable
- relate to the planning permission being granted
- fulfill a planning purpose, and
- accurately convey its intended effect and avoid uncertainty and vagueness.

An applicant can apply to Victorian Civil and Administrative Tribunal (VCAT) for a review of conditions in a planning permit under section 80 of the Act.

## What are the requirements that relate to planning permit conditions for infrastructure provision?

Section 62 (5)(a) of the Act provides the opportunity for the RA to include conditions required to implement an approved DCP.

Section 62 (5)(b) of the Act provides the opportunity for the RA to include a condition that specified works which the RA considers necessary as a result of the grant of the permit be:

- provided on or to the land, and
- paid for wholly by the applicant or partly by the applicant where the remaining cost is to be met by any Minister, referral authority, public authority or council providing the works.

Section 62 (6) of the Act provides that the RA must not include a condition requiring a person to pay an amount for or provide services or facilities other than a condition:

- required to implement an approved DCP, or
- requiring services or facilities to be provided in accordance with a pre-existing agreement under section 173 of the Act.

There is some dispute about the interpretation and application of this part of the Act. The validity of conditions has been reviewed at VCAT (Christian Brothers Vic Pty Ltd v Banyule City Council (2001) VCAT 2120) and through the Supreme Court (Curry v Melton Shire Council (2000) VSC 352).

The debate is essentially about the interpretation of works, services and facilities and the validity of conditions that require works, services and facilities to be provided off-site (i.e. on land that is not part of or abutting the land subject to the planning permit), which are considered necessary as a result of the grant of the permit.

## What are works, services and facilities?

The Act makes a distinction in section 62 between the rules that apply to planning permit conditions requiring works to be provided or paid for and those that require services and facilities. It is therefore important to understand the distinction between works, services and facilities.

The Act defines works as including any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

However, the Act does not define services and facilities.

In the context of section 62(6) and its relationship to DCPs, the following descriptions are provided:

- Facilities are building(s) constructed for a specific public purpose(s) and the land which is needed to accommodate the buildings.
- Services are activities carried out from facilities for the care and benefit of residents.

Section 3 of the Act defines buildings to include:

- (a) a structure and part of a building or a structure
- (b) fences, walls, out-buildings, service installations and other appurtenances of a building, and
- (c) a boat or a pontoon which is permanently moored or fixed to land.

## When is it appropriate to use a planning permit condition for the payment or provision of infrastructure?

Despite the debate about the interpretation of section 62, it is generally accepted that a planning permit condition requiring payment for or provision of infrastructure can validly be imposed in the following circumstances, where the permit condition requires:

- The provision of or payment for specified works on the land subject to the planning permit and the works will service the permitted development.
- The provision of or payment for specified works to the land subject to the planning permit.
- The applicant to enter into a section 173 Agreement to provide or pay for works on or to the land subject to the planning permit necessitated by the grant of the permit.

- The implementation of a payment-in-lieu of parking provision in accordance with a parking precinct plan approved under clause 52.06 - 6 (parking precinct plan) of the planning scheme and incorporated into the planning scheme.
- The payment or provision of a public open space contribution up to 5% of the site value of the land in accordance with section 18 of the Subdivision Act 1988.
- The payment or provision of a public open space contribution of 5% of the site value of the land or higher in accordance with an approved schedule to clause 52.01 (public open space contribution and subdivision).
- The payment of an infrastructure levy in accordance with an approved DCP.
- The provision of or payment for utility services as directed by a servicing authority under section 55 of the Act.
- The implementation of an existing agreement under section 173 of the Act to provide facilities and services.

## **When is it inappropriate to use a planning permit condition for the payment or provision of infrastructure?**

A planning permit cannot include a condition that requires:

- The applicant to enter into a section 173 agreement to provide services or facilities.
- The provision of or payment for facilities and services in the absence of an approved DCP, no matter whether the facilities or services are located on or off the land subject to the planning permit.

The ability of the RA to validly impose certain conditions is doubtful, in particular planning permit conditions that require:

- The provision of or payment for works on land that is not part of or abutting the land subject to the planning permit, when no DCP is in place.
- The applicant to enter into a section 173 agreement to provide or pay for works on land that is not part of or abutting the land subject to the planning permit.

RAs seeking to impose such conditions should obtain independent legal advice.

## **Where can further information be obtained?**

Information about planning permit conditions is provided in the following Department of Infrastructure publications:

- [Using Victoria's Planning System], and
- [Planning - A Short Guide].

# **Development contributions plans (DCPs)**

## **Introduction**

This section provides information about:

- what a DCP is
- when a DCP should be used
- a step-by-step process for preparing a DCP, and
- how to implement a DCP in the planning scheme.

Select from the following to find out more:

- [Understanding DCPs]
- [Deciding to prepare a DCP]
- [Preparing a full cost apportionment (FCA) DCP]
- [Incorporating a DCP into the planning scheme]
- [Establishing an accounting system for a DCP]
- [Implementing a DCP], and
- [Reviewing a DCP].

## Understanding DCPs

This section provides information about DCPs.

### DCP basics

- [What is a development contributions plan (DCP)?]
- [What is the role of DCPs in the planning system?]
- [What are the principles of a DCP?]
- [Who can prepare a DCP?]
- [What are the main steps in the DCP process?]
- [When could a DCP be prepared?]
- [When will a DCP be most effective?]
- [What area can a DCP cover?]
- [What development can be charged a levy under a DCP?]
- [What development cannot be charged a levy under a DCP?]
- [What timeframe can a DCP cover?]

### Including infrastructure projects in a DCP

- [What infrastructure projects can be included in a DCP?]
- [What justification is required for infrastructure projects to be included in a DCP?]
- [How are infrastructure projects classified?]
- [What costs can be included in a DCP?]
- [What is the maximum levy that can be charged for infrastructure in a DCP?]

### DCP requirements and good practice

- [What are the requirements of the Act?]
- [What will be considered through the planning scheme amendment process?]
- [What is good practice?]

### Considerations before preparing a DCP

- [What are the advantages of using a DCP?]
- [What should be considered before preparing a DCP?]

## What is a development contributions plan (DCP)?

A development contributions plan (DCP) is a mechanism used to levy new development for contributions to planned infrastructure needed by the future community.

A council collects development contribution levies from new development through an approved DCP. An approved DCP is a DCP that forms part of a planning scheme.

The Minister for Planning has to approve an amendment to the planning scheme in order to incorporate a DCP. In approving the amendment to incorporate a DCP in the planning scheme, the Minister approves the DCP.

An approved DCP is implemented through the Development Contributions Plan Overlay and schedule. The Development Contributions Plan Overlay indicates the area covered by the DCP. The schedule indicates the levies that apply in a particular area.

A DCP identifies infrastructure to be provided. The infrastructure:

- must serve a neighbourhood or larger area
- must be used by a broad section of the community, and
- will in most cases serve a wider catchment than an individual development.

With the exception of open space contributions in clause 52.01 of the Victoria Planning Provisions or an incorporated parking precinct plan, an approved DCP is the only legitimate mechanism for requiring a levy towards infrastructure provision in the planning scheme across a number of users.

## **What is the role of DCPs in the planning system?**

A council should plan ahead to make sure that:

- new infrastructure needed by the community is provided when and where it is needed, and
- funds are available to provide the infrastructure.

Planning ahead is part of a council's strategic planning and service delivery responsibility. In greenfield areas, provision of new infrastructure to keep pace with urban development will be a priority. In established urban areas, upgrading the existing infrastructure may be necessary because of the redevelopment of existing sites, changing community expectations, changing standards of provision or the need to replace an existing infrastructure that has reached the end of its economic life.

While the pace and scale of new development in these two examples will be different, councils and State Government should plan ahead for infrastructure funding and provision. There are various funding options available to councils and State Government to fund new infrastructure. The options include development contributions.

The objectives of planning and the planning framework established by the Planning and Environment Act 1987 include:

'To protect public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community.'

Part 3B of the Act expressly provides for a council to collect development contributions to fund the provision of infrastructure by a levy imposed through an approved DCP in the planning scheme. It also sets out the provisions relating to the establishment and administration of DCPs.

## **What are the principles of a DCP?**

### **DCPs must have a strategic basis**

The DCP must be strategically justified and linked to the State Planning Policy Framework or the Local Planning Policy Framework in the planning scheme. The DCP will only be approved if a clear, sound strategic basis can be demonstrated.

### **Justification of infrastructure projects**

Infrastructure projects can be included in a DCP if they will be used by the future community of an area, including existing and new development. This means that new development does not have to

trigger the need for new infrastructure in its own right. It can only be charged in accordance with its projected share of usage. This is all that is required to demonstrate 'need'.

### **Nexus between new development and the need for new infrastructure**

It must be demonstrated that the new development to be levied is likely to use the infrastructure to be provided. New development should not be considered on an individual basis, but as part of the wider community that will use an infrastructure project. The wider community may also include existing development. This is all that is required to demonstrate 'nexus' to justify the application of the charge.

### **DCPs must have a reasonable time horizon**

A DCP must include a time horizon. This time horizon should not exceed 20 to 25 years. If the time horizon is not reasonable, new development in the early years will be paying for infrastructure that will not be delivered until many years later. This is inequitable and unreasonable.

### **Infrastructure costs must be apportioned on the basis of projected 'share of usage'**

For the purposes of calculating levies in a DCP, the costs of infrastructure projects are shared amongst all the likely users. The likely users will include existing and future development. In this way, new development will not be charged for the whole cost of an infrastructure project that others will use and costs are distributed on a fair and equitable basis.

However, while the levy is calculated on the basis that all the users pay for the cost of the infrastructure, only new development can actually be charged the levy. Therefore, a DCP will rarely cover the full cost of providing the infrastructure.

### **A commitment to provide the infrastructure**

A DCP imposes a binding obligation on the infrastructure provider to provide the infrastructure by the date or criteria specified in the DCP.

### **Accountability**

This means the levies collected must be used to provide the infrastructure specified in the DCP. Proper financial accounts must be kept to demonstrate this.

### **Transparency**

All assumptions relating to the calculation of levies within the DCP must be documented and justified and expressed in non-technical language so they can be clearly understood.

### **DCP must be in the planning scheme**

Development contributions to fund planned infrastructure for the wider community, neighbourhood or region can only be levied through an approved DCP that forms part of a planning scheme.

## **Who can prepare a DCP?**

As an approved DCP involves an amendment to a planning scheme, it must be prepared by a planning authority.

A planning authority will in most cases be the relevant council, but can be any agency that is authorised by the Minister for Planning under the Planning and Environment 1987. Therefore, State

Government agencies that provide infrastructure can be authorised to prepare a DCP, and can use these guidelines to prepare a DCP and incorporate it into the planning scheme.

While a State Government agency can be authorised to prepare a DCP and related planning scheme amendment, it cannot collect the levies or administer the DCP directly. This remains the councils' responsibility.

## **What are the main steps in the DCP process?**

The main steps in the DCP process involve:

- identifying the need for new infrastructure
- exploring funding options
- selecting the DCP funding option
- committing resources to prepare, implement and administer the DCP
- preparing the DCP
- preparing and processing a planning scheme amendment to implement the DCP
- administering the approved DCP (involves establishing an appropriate accounting system, tracking payments and expenditure, providing the infrastructure as set out in the DCP, managing unspent funds etc.), and
- monitoring the DCP to make sure it is implemented over the nominated time horizon.

## **When could a DCP be prepared?**

The following circumstances might highlight the need for new infrastructure that could be funded through an approved DCP. Therefore a DCP may be prepared as a result of or in association with any of the following:

- the preparation of a strategic plan or structure plan for an area where future growth is expected
- a rezoning process
- a review of the Municipal Strategic Statement for the whole municipality
- a new infrastructure funding policy for the municipality or State Government agency
- an infrastructure needs analysis or a strategic plan for the provision of a certain type of infrastructure, for example open space or drainage, or
- other strategic planning initiatives leading to infrastructure commitments.

## **When will a DCP be most effective?**

Only new development can be charged a development contribution levy. This means that a DCP is likely to be most effective when applied to areas that will experience a high degree of change.

DCPs are likely to recover the greatest proportion of the cost of infrastructure provision in areas experiencing high levels of urban growth, such as greenfield sites on the fringe and large redevelopment sites within established urban areas.

A DCP can also be a suitable mechanism for obtaining contributions towards infrastructure in established urban areas that are experiencing dispersed new development. In this situation, a DCP will allow the council to collect a proportion of the cost of providing the infrastructure, but is unlikely to recover the whole cost.

In rural areas, the amount of new development and consequently the levies likely to be collected may not warrant the preparation of a DCP. A further difficulty for rural councils is that growth is often unpredictable in terms of timing and location. However, there may be specific circumstances in which a DCP may be suitable.

## **What area can a DCP cover?**

A DCP may cover all or part of a municipality. The equity of charging developers a levy for infrastructure in one part of the municipality and not in another should be considered, if DCPs are applied on a partial basis.

## **What development can be charged a levy under a DCP?**

While the levy is calculated on the basis that all the projected users pay for the cost of the infrastructure, only new development can actually be charged the levy.

## **What development cannot be charged a levy under a DCP?**

Existing development cannot be charged a development contribution levy because by definition the charge is applied to new development through the planning system.

The following types of new development are not subject to the requirements of planning schemes and are therefore not subject to the requirements of a DCP:

- development on Commonwealth land
- development that is being undertaken by the Commonwealth Government
- development that is being undertaken by or on behalf of the Ministers for Conservation, Forests and Lands, Health and Education or their current equivalents (refer to Page 266, Victoria Government Gazette, 10 February 1988). This means that public schools and hospitals are exempt.

A council also has discretion to exempt any new types of land use or development from the payment of development contribution levies. For example, on the basis that they provide a community service, a council may exempt:

- private schools and hospitals
- churches, or
- community facilities provided by non-profit organisations.

Similarly, councils may exempt particular developments:

- in circumstances of hardship, or
- to facilitate the achievement of economic development objectives.

Fair cost apportionment requires that what is not collected from existing development and exempted uses cannot be collected from other uses that are required to pay the levy. So while the exempted land uses are included in the calculation of the levies because they are likely to use the infrastructure, they will not be required to pay. It follows that any funding shortfall will need to be made up from alternative funding sources, such as general rates and government grants.

## **What timeframe can a DCP cover?**

The Act does not place any limit on the timeframe for a DCP. The DCP, however, must include a timeframe. In setting the timeframe, it is important to consider:

- the time horizon for strategic planning, infrastructure provision and funding
- the expected rate of new development, and
- the degree of certainty in projecting growth.

For example, a short timeframe, say five years, has the advantage of providing greater certainty in projecting growth rates. However, it will mean that the early development may escape payment for infrastructure projects which may be provided in a longer timeframe, after the DCP has finished.

Alternatively, a long timeframe, say 20 years plus, has the disadvantage of providing less certainty in projecting growth rates required to calculate the levies and determine infrastructure needs and delivery.

Very long term horizons may also diminish the principle of equity which underlies DCPs. It may be considered unreasonable to charge a user for a service which will not be delivered for many years.

## **What infrastructure projects can be included in a DCP?**

A DCP may include infrastructure to be provided by a council or State Government agency. Basic utilities, such as water supply and sewerage, provided by servicing authorities under their own legislation cannot be included in a DCP.

The types of projects in a DCP can include the following:

- a new item of infrastructure
- an upgrade in the standard of provision of an existing infrastructure item
- an extension to an existing facility, or
- the total replacement of an infrastructure item after it has reached the end of its economic life.

A DCP cannot be used to fund the total replacement of an infrastructure item, if the replacement is necessary as a result of poor maintenance.

It is not appropriate to include existing infrastructure in a DCP that was funded through general taxes or rates.

However, where an infrastructure project has been provided as part of a DCP calculated on a projected share of usage basis, and the intention is to recover all or part of the cost of the facility from contributions from development beyond the timeframe of the DCP, it would be fair to include such a project in a subsequent DCP.

## **What justification is required for infrastructure projects to be included in a DCP?**

The selected infrastructure and the standard of provision must be justified in the DCP. The inclusion of infrastructure and the standard may be challenged through the planning scheme amendment process.

To qualify for inclusion in a DCP, all infrastructure:

- must be used by a broad cross-section of the community, and
- must serve a neighbourhood-sized catchment or larger area.

This means that the infrastructure provided is likely to be used by a broad range of people, given the likely profile of the expected community (age, ethnicity, sex) which justifies the selection of the infrastructure.

To justify the infrastructure projects to be included in a DCP, the type and standard of infrastructure must be either:

- basic to the health, safety or well-being of the community, or

- consistent with current community expectations of what is required to meet its health, safety or well-being.

The definition of basic infrastructure will be linked to the expected demographic profile of the neighbourhood. For example, in a family-oriented developing area the list infrastructure projects considered to be basic could include roads, drainage, public transport, a neighbourhood park with playground equipment, a child care centre, a maternal and child health centre and a community meeting facilities.

Additional justification will be required to demonstrate that the type or standard of infrastructure is supported by the general community. This will include community consultation conducted in association with a strategic study that is given effect through the planning scheme. For example, an urban design framework or open space strategy reflected in the planning scheme may specify certain design standards for street treatments, landscaping, provision of facilities etc.

Community expectations of what is required for the health, safety and well-being of the community are likely to change over time. It should be recognised that DCPs will be based on the reasonable expectations at the time of their preparation.

## **How are infrastructure projects classified?**

The Act requires infrastructure projects to be classified either as development infrastructure or community infrastructure. The distinction is important because:

- there is a maximum development contribution levy that can be charged for community infrastructure
- the timing of the payment of each levy is different
- the person who pays the levy may be different, and
- the process for collection is different.

The following works, services or facilities may be funded from a development infrastructure levy:

- acquisition of land for roads, public transport corridors, drainage, public open space, and community facilities including (but not limited to) those listed under the last dot point in this list
- construction of roads, including the construction of bicycle and foot paths, and traffic management and control devices
- construction of public transport infrastructure, including fixed rail infrastructure, railway stations, bus stops and tram stops
- basic improvements to public open space, including earthworks, landscaping, fencing, seating and playground equipment
- drainage works, and
- buildings and works for or associated with the construction of maternal and child health centres, child care centres, kindergartens, or any center which provides these facilities in combination.

Levies for development infrastructure projects are generally collected through conditions on planning permits.

Community infrastructure includes projects involving the construction of all other buildings or facilities used for community or social purposes. Levies for community infrastructure projects are collected through the building permit process. The building permit applicant must pay the community infrastructure levy prior to the building permit being issued.

## **What costs can be included in a DCP?**

The calculation of the levy is based on the estimated cost of the infrastructure. The DCP must provide clear documentation detailing the costs associated with projects included. This information forms the

essential basis of the DCP. It is likely to be challenged and reviewed through the planning scheme amendment process.

The following costs can be included in the calculation of levies:

- the capital costs of providing the infrastructure projects
- the cost of financing the infrastructure projects, if provided early in the life of the DCP
- the design costs associated with the infrastructure projects, and
- the cost of preparing and approving the DCP.

The capital cost is expenditure which:

- creates a new asset, or
- extends the life of an existing asset where the cost required would be equal to or greater than the cost of providing the asset in the first place.

Recurrent costs such as maintenance and operating costs or costs associated with the administration of the DCP cannot be included in the calculation of a development contributions levy.

## **What is the maximum levy that can be charged for infrastructure in a DCP?**

### **Community infrastructure**

Section 46L (1)(a) and (1)(b) of the Act sets a maximum levy for community infrastructure. The maximum levy is:

- \$450 for each dwelling to be constructed, and
- 0.25 cents in the dollar of the cost of the building work in any other case.

Given the maximum levy that can be charged for community infrastructure in a DCP, a council will need to set priorities for community infrastructure funded through a DCP. Depending on the needs of the community and scale and pace of new development, a council may need to explore other funding options for this type of infrastructure.

### **Development infrastructure**

There is no maximum levy for development infrastructure in the Act. However, the classification of infrastructure as development infrastructure and the amount of the levy may be subject to challenge and review through the planning scheme amendment process.

## **What are the requirements of the Act?**

Section 46K(1) of the Act sets out the mandatory contents of a DCP. A DCP must:

- Clearly identify the geographical area that the DCP applies to. The DCP must document and justify the area selected.
- Set out in a schedule the infrastructure to be funded through the DCP and the staging of the provision and classify each item as development infrastructure or community infrastructure.
- Relate the need for the infrastructure to the proposed development of land in the area.
- Specify the estimated cost of each of the infrastructure projects.
- Classify the infrastructure projects into development or community infrastructure.
- Specify the proportion of the total estimated cost of the infrastructure which is to be funded by a development infrastructure levy or community infrastructure levy or both.

- Clearly identify where the levies will apply and what types of development will be charged.
- Describe the method used for calculating the levies payable.
- Provide for the procedures for the collection of a development infrastructure levy where a planning permit is not required for the development.

The Act also provides that a DCP may:

- exempt certain land or types of development from payment of a development infrastructure levy or community infrastructure levy or both, or
- provide for different levy amounts to be payable in respect of different types of development or different areas.

To satisfy section 46Q of the Act, it is necessary to establish an administrative system that enables payments and expenditure to be tracked over the life of the DCP, and ensure that monies collected are used to provide the specified infrastructure.

## **What will be considered through the planning scheme amendment process?**

Stakeholders, the independent Panel (if one is appointed to review the amendment) and the Department of Sustainability and Environment will carefully examine the assumptions and information in the DCP during the planning scheme amendment process to ensure that:

- the DCP has a clear and sound strategic base and is consistent with the relevant policy framework in the planning scheme
- the infrastructure in the DCP is justified
- the cost of the infrastructure in the DCP is justified
- there is a commitment to provide the infrastructure as set out in the DCP
- the area selected to pay the levy is justified
- the amount of development infrastructure levy or the community infrastructure levy (or both) is justified
- the DCP complies with the principles outlined in these guidelines (equity, strategic justification, projected share of use, accountability etc), and
- the DCP meets the requirements of the Planning and Environment Act 1987, including any relevant Ministerial Directions.

## **What is good practice?**

In addition to this information, a DCP will be most effective if it:

- identifies the proposed location of the infrastructure project
- is transparent, with all the assumptions documented and justified
- clearly and logically presents all the relevant information
- identifies the authority responsible for providing the infrastructure
- includes a commitment to provide the specified infrastructure by the nominated date or event
- uses the terminology set out in these guidelines, and
- includes an annual adjustment for inflation based on the General Consumer Index for Capital Cities.

Good practice would also involve:

- discussing the draft DCP with the main stakeholders prior to the council's decision to prepare and exhibit the amendment
- an independent review of the draft DCP
- obtaining the support of council's corporate administration over the life of the DCP
- monitoring the DCP on an annual basis to make arrangements for the provision of the infrastructure items in the DCP ahead of the due date, and
- reviewing the DCP at the time the Municipal Strategic Statement is reviewed to ensure that it reflects the current strategic planning in the municipality.

## **What are the advantages of using a DCP?**

The process of preparing a DCP requires the integration of the provision of infrastructure with the strategic planning framework for the municipality.

A DCP enables infrastructure costs to be shared fairly amongst multiple contributors.

A DCP can enable the earlier delivery of infrastructure than if its provision is dependent upon general taxes or rates. It also provides certainty about the delivery of infrastructure for the community and developers, because a DCP must satisfy accountability and transparency principles.

A DCP provides developers with certainty that the money that they contribute will be accounted for separately and spent on the infrastructure it was collected to provide.

An approved DCP requires a planning scheme amendment involving public consultation through the exhibition process. This provides opportunities for:

- the community to influence the type, location and standard of infrastructure provided through the DCP
- developers to examine the costs, staging, timeframes, and standard of provision, and
- the council to justify the infrastructure projects and the apportionment of costs.

## **What should be considered before preparing a DCP?**

The decision to prepare and implement a DCP has implications for council.

There is substantial time and effort involved in preparing a DCP and incorporating it into the planning scheme. The preparation of a DCP and associated planning scheme amendment documentation may take 12 months or longer.

In including an infrastructure project in a DCP, council or other infrastructure provider indicates an intention to provide the infrastructure, even if it fails to collect all the expected funds.

Accurate predictions about the future cannot be made with 100% certainty. A DCP is based on assumptions about growth rates, timing of infrastructure provision and the emerging needs of a changing community. Within this context, the DCP must demonstrate that it is based on reasonable estimates that will be tested through the planning scheme amendment process.

The cost of providing infrastructure in the future might vary from the present day estimates used to calculate the development contribution levies in the DCP and additional funds may be required to deliver the infrastructure on time. Land acquisition costs in particular are difficult to estimate with confidence.

In establishing a DCP, council will need to provide a system and resources to administer and track payments and expenditure over the life of the DCP.

A council also has a responsibility to monitor and review the DCP over time because some of the assumptions about development trends and the infrastructure needs may not be realised. Similarly, the DCP should be reviewed to reflect changes to the strategic planning framework for the municipality.

Where a change to an approved DCP is required, a further planning scheme amendment process will be necessary.

Towards the end of the life of the DCP, a council should assess any unspent funds and explore the options available in section 46Q of the Act, including the return of monies to land owners or reallocation of monies to another project in that area.

## Deciding to prepare a DCP

### Before you begin

Before you begin this process, read the information in [Understanding DCPs]

It may also be helpful to read [Preparing a FCA DCP] in order to estimate the resources required to develop a DCP.

### Outcome

The outcome of this process is the decision to prepare a DCP.

### Process

Complete the following tasks.

Task	Description
1	Review the strategic framework and examine the demand for infrastructure. For more information, go to [Guidelines for determining the demand for infrastructure]
2	Assess the funding options for the infrastructure. For more information, go to: <ul style="list-style-type: none"> <li>[Guidelines for assessing funding options], and</li> <li>[Considerations for evaluating funding options].</li> </ul>
3	If you select a DCP as the preferred preliminary option, conduct a detailed assessment to evaluate the implications and resources required to prepare and approve the DCP compared to the likely funds to be collected through the DCP. For more information, go to [Guidelines for evaluating the DCP option in detail].
4	Prepare a report to council documenting the basis of your recommendation to select a DCP as the preferred option.

### Guidelines for determining the demand for infrastructure

It is part of a council's on-going strategic planning and service delivery responsibility to ensure that:

- infrastructure needed by the community is provided when and where required, and
- funds are available to develop the infrastructure.

The tasks include:

- assessing the implications of the strategic planning framework, capital works program, corporate plan, etc
- identifying a suitable timeframe for planning infrastructure provision
- projecting the type of infrastructure that will be needed in the future by a broad cross-section of the community
- determining who will use the infrastructure
- identifying when and where the infrastructure is needed
- estimating costs, and
- considering the impact of any infrastructure that is planned to be provided by an adjacent municipality or State Government agency.

The identification of the need for new infrastructure may result from:

- the three-year review of the Municipal Strategic Statement
- a regional strategy
- implementation of a strategic plan or direction in the Municipal Strategic Statement
- development of a structure plan to set the broad development framework for new urban development
- an assessment of the performance of existing infrastructure, or
- a strategic review of the existing and proposed infrastructure; for example an open space strategy or a review of community facilities.

Demand for infrastructure can also be generated by:

- existing development, or
- new development either located within the municipality or in an adjacent municipality.

### **Guidelines for assessing funding options**

A council's decision to provide new infrastructure or to upgrade existing infrastructure should include identifying and evaluating options for funding, including the following:

#### **General options**

- council budget and capital works program
- cash reserves
- borrowed funds
- grants from the State or Commonwealth Government
- special rates and charges schemes
- public/ private partnerships
- co-funding arrangements with State or Commonwealth Government or other councils, and
- other sources.

#### **Development contributions**

- voluntary agreements
- development contributions plans
- a cash in lieu of parking payment specified in the schedule to the parking provisions in clause 52.06 of the planning scheme
- a public open space contribution under clause 52.01 of the planning scheme, and
- a public open space contribution under the Subdivision Act 1988.

### **Considerations for evaluating funding options**

Funding options should be evaluated taking into account the:

- policy and organisational context
- type of infrastructure, and
- requirements for implementation.

### **Policy and organisational context**

Examine:

- the potential to move from general community funding through rates and taxes to funding sourced from users or new development
- council's priorities and commitments
- council's strategic planning culture and corporate environment, and
- capital works program and budget.

### **Type of infrastructure**

For each proposed infrastructure item you should consider the:

- amount of money required
- timing of provision of the facility and the funds likely to be available at the time of expenditure
- on-going maintenance and operating costs, and
- likely users.

### **Requirements for implementing the funding option**

Consider the:

- likely success of a bid for a grant
- amount of information required to support the funding option and the resources required to fill the information gaps
- council resources to administer the option
- complexity and length of time involved to establish the funding option
- level of public involvement
- timeframe for collection of the funds and any time lag between collection and the delivery of the infrastructure
- certainty of the expected outcome, and
- opportunity for mixing funding options.

Based on a comparison and evaluation of the funding options, the preliminary selection of the preferred funding option can be made.

### **Guidelines for evaluating the DCP option in detail**

If the DCP option emerges as the preferred option at this stage, a detailed evaluation of this option is needed.

The DCP option will involve substantial time and resources and will affect most parts of a council's administration, particularly if several kinds of infrastructure are planned. The decision to prepare a DCP requires a commitment from a number of departments within council that will have responsibility to prepare and implement the DCP. This corporate commitment will need to be ratified by council.

In evaluating the DCP option you should consider the following:

- The availability of information required to calculate the levies and prepare the DCP including:
  - the scale, location, timing and type of development
  - the profile of the expected community
  - the cost, scale, location, timing and type of infrastructure needed, and
  - the strategic justification for the DCP in the planning scheme.
- The amount and cost of resources required to prepare, incorporate into the planning scheme, administer and monitor the DCP.

- The funds likely to be collected given:
  - the expected amount and rate of new development
  - the time frame for collection of the funds through a DCP, and
  - the area where the levy will apply and any potential exemptions.
- The budget/cash flow implications:
  - given the timing, scale and cost of the infrastructure to be provided
  - given the time frame for collection of the funds through a DCP, and
  - if the infrastructure is to be provided ahead of the collection of all the money to pay for it.
- The willingness to make a commitment to deliver the infrastructure at a particular time in accordance with the DCP.

It may be helpful to review examples of DCPs prepared by other councils.