

IF IT'S NOT IN THE SCHEME, IT'S NOT A DEVELOPMENT CONTRIBUTION PLAN

Jess Kaczmarek

Clayton Utz

A development contribution plan ('DCP') is a scheme under which a developer makes a contribution towards the cost of infrastructure required to meet the future need of a particular community. Though many plans have been in place either informally or by way of section 173 agreements for many years, the introduction in 1995 of Part 3B into Victoria's *Planning & Environment Act 1987* formalised contribution plans by generally restricting their application to those plans incorporated into the planning scheme.

The lacklustre reception this change received, and the continuing attempts to enshrine informal contribution plans through planning permit conditions, have led to recent reforms by the Department of Sustainability and Environment ('DSE') to ensure that the only DCPs operating in the planning system are those incorporated formally into the planning scheme.

APPROVED DEVELOPMENT CONTRIBUTION PLANS

Part 3B provides for the creation, implementation and enforcement of approved DCPs. Section 46H of the Act defines a DCP as one which forms part of an approved planning scheme. A planning scheme may include one or more DCPs for the purpose of levying contributions for the provision of works, services and facilities. Under this section, DCPs must take the form set out in section 46K and the minister is entitled to issue written directions in relation to the preparation and content of any plan.

OTHER ALTERNATIVES?

Where there is no approved DCP, authorities may endeavour to include a monetary contribution as a condition of the planning permit. Although the Act is somewhat unclear in this regard and applies several delicate distinctions between the concepts of 'works', 'services' and 'facilities', a

Recent reforms to Victoria's laws on development contribution plans mean that the only DCPs operating in the planning system are those incorporated formally into the planning scheme.

contribution could be levied where the responsible authority:

- included a condition requiring services or facilities to be provided under a section 173 agreement. It could not do this in respect of 'works'; and
- included a condition for specified works. However, this could only be done with respect to works provided 'on or to the land' and to 'be 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(5)(b)(ii)).

RECENT REFORMS TO THE SYSTEM

Comprehensive reforms have been proposed for the DCP system, with the DSE in May 2003 releasing a summary of the reform package, Development Contributions Guidelines, and a summary of future reforms. At the same time, the Minister for Planning also released Ministerial Guidelines aimed at clarifying some of the uncertainty in relation to DCPs.

DEVELOPMENT CONTRIBUTIONS GUIDELINES

These guidelines are intended to provide councils, developers and infrastructure agencies with a clear expectation of the DCP system and to outline the procedures for incorporating a DCP into a planning scheme. The guidelines make it clear that an approved DCP is the only legitimate mechanism for imposing a levy towards infrastructure across a number of users. Furthermore, they set down key principles to govern DCPs including:

- DCPs must have a strategic basis, i.e. linked to relevant planning policy;
- authorities must justify infrastructure projects;

- there should be a nexus between new development and need for new infrastructure, i.e. the new development to be levied is likely to use the infrastructure to be provided;

- infrastructure costs must be apportioned on the basis of projected 'share of usage';
- accountability and transparency; and
- DCPs must be incorporated into the planning scheme.

Under the guidelines, infrastructure projects must be justified through the planning scheme amendment process whereby interested parties have an opportunity to object to a particular project's inclusion in the plan.

DSE REFORM SUMMARY—A NEW DEVELOPMENT CONTRIBUTIONS SYSTEM FOR VICTORIA

Some of these reforms, if accepted, will result in amendments to the Act, while others will amend the Guidelines. Proposed reforms include:

- the division of DCPs into full cost apportionment DCPs and off-the-shelf DCPs. Off-the-shelf DCPs will be restricted to residential development and will be based on a pre-set schedule of levies;
- the possible amendment of section 62 of the Act to allow for the imposition of DCPs which have not been included in the planning scheme, where the levy or infrastructure could not have been reasonably provided for in a planning scheme; and
- authorities will not be required to incorporate infrastructure servicing individual developments into the planning scheme. These may be provided for as planning permit conditions.

THE DIRECTION BY THE MINISTER FOR PLANNING

On 15 May 2003, the Minister for Planning issued a Direction with respect to DCPs, which aimed to clarify the meaning of 'development infrastructure levy' under the Act and provided a list of works, services or facilities which may be funded under these levies, including:

- acquisition of land;
- construction of roads;
- construction of public transport infrastructure;
- basic improvements to public open space;
- drainage works; and
- buildings and works for or associated with the construction of maternal and child health care centres, kindergartens or any centre which provides these facilities in combination.

CONCLUSION

The reform package produced by the DSE indicates a clear policy preference for the incorporation of DCPs into planning schemes. All DCPs must be approved DCPs in order to be lawfully levied under the Act, while monetary contributions may only be exacted from developers through planning permit conditions for development specific levies. Glen Eira, Port Phillip, Whittlesea and Wyndham are just some of the councils to incorporate a DCP into their planning schemes. Others will inevitably follow.

Jess Kaczmarek's article was previously published in *Clayton Utz's Insights* (September 2003). Reprinted with permission.
