

13.2.5 CLOSURE OF THE WEST CANNING VALE DEVELOPMENT CONTRIBUTION PLAN

Director: C Terelinck
Author's Declaration Nil.
of Interest:
Property Number: Nil.
Application No: PF06/00063
Applicant: City of Gosnells
Owner: N/A
Location: West Canning Vale Development Contribution Plan (DCP3)
Zoning: MRS: Urban
TPS No. 6: Residential
Review Rights: State Administrative Tribunal
Area:
Previous Ref:
Appendix: 13.2.5A Transaction Summary Statement

PURPOSE OF REPORT

For Council to consider closure of the West Canning Vale Development Contribution Plan (DCP) and its associated Reserve Account with surplus funds to be reimbursed to contributing landowners.

BACKGROUND

The DCP was included in Town Planning Scheme No. 6 (TPS 6) through Amendment 47, which was finalised in mid-2011.

During its operation, contributions from developing landowners have funded the delivery of Common Infrastructure Works (CIW) required by the Development Contribution Plan (DCP). The final environmental works have been costed and are currently being undertaken, and all other works are complete.

The environmental works will not be completed until 2024, due to the obligation to install and manage revegetation. Given that the other DCP works have been delivered, it is considered unreasonable (to the contributing landowners) to delay the closure of the arrangement.

Clause 6.10.20 of State Planning Policy 3.6 – Infrastructure Contributions (SPP 3.6) requires that:

“Once all infrastructure and facilities identified in a DCP have been delivered, the local government is required to take the appropriate steps to close the DCP within 12 months, or as soon as practicable, having consideration for the policy provisions for a shortfall or excess funds in a DCP.”

The City wrote to contributing landowners within the DCP on three separate occasions in 2022 to:

- i. Advise the City is proposing to extinguish the DCP and close the Reserve;
- ii. Outline the distribution methodology of surplus funds; and
- iii. Invite comment on the distribution methodology of surplus funds.

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The proposed methodology for distribution of surplus funds mirrors the formula used to calculate developers' contributions towards the DCP where owners were required to contribute on the proportionate basis of their land as a share of the total contribution area. Similarly, the reimbursement rates will be proportionally based on the distinct areas for CIW and Public Open Space (POS) contributions.

Responses received by contributing landowners were generally supportive of the proposed methodology, with the exception of one developer who sought to re-open a DCP claim that was settled some time ago. That matter has been responded to administratively.

DISCUSSION

The issues to be considered in relation to the closing of the DCP are discussed below.

Common Infrastructure Works

The DCP details a range of CIW funded by contributions from owners within the DCP area. These include roads and drainage as well as soft infrastructure such as open space and environmental works. The majority of these works were undertaken by developers, with the City upgrading Ranford Road, part of the footpath network, completing Emerald Park and some environmental works within the Conservation Category Wetlands (CCW) areas. The cost of works were then claimed by the party completing the works in accordance with the DCP.

Two outstanding claims remain in relation to the scope of works set out in the DCP. These are as follows:

1. Environmental works within the Conservation Category Wetlands

The DCP makes provision for environmental works relating to the rehabilitation and development of CCW. Some of these works were not delivered by developers and as a result, the City is undertaking the works included in the DCP. However, the nature of these works means they cannot be fully completed until 2024. The works should be funded by the DCP Reserve.

A contractor has been awarded a tender for the works with a budget of approximately \$120,000, and this sum will be set aside from the DCP Reserve balance.

2. Outstanding Claim for drainage works

The last outstanding cost is a reimbursement yet to be claimed by Eastview Nominees Pty Ltd (Eastview) for drainage works that have been completed. The claim has been pending for more than 12 months and is reliably estimated at approximately \$30,000, given that the cost has already been incurred.

It is recommended Council resolves to set aside \$30,000 from the Reserve and Eastview be requested to lodge its substantive claim. In the event the claim is assessed to be less than \$30,000 the surplus will be refunded to contributors in the same manner and proportion as the CIW surplus.

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Administration costs

To determine the closing balance of the Reserve administration costs have not been charged to the DCP after 31 January 2023. However, an annual audit review of the DCP Reserve is required, and will incur a cost of \$950.93. This amount will be withdrawn from the Reserve at closure.

Non-Contributing Landholding

Contributions have been made by all but one of the original parent lots within the DCP area. Lot 1 Ranford Road was developed in 2003 and potential future contributions to the DCP were secured by a Deed of Agreement (Deed). However, the Deed did not caveat the land and the land was subsequently sold.

As the contribution obligation occurs only once, the new owners were not required to enter an arrangement for the outstanding contribution obligation. The Lot 1 Ranford Road contribution liability at the time of final adoption of the DCP was \$339,840.29. As Lot 1 Ranford Road made no contribution it has been removed from the DCP area when calculating proportionate refunds and will not share in the credit funds of the Reserve.

Public Open Space

The area of land required for POS is determined in the Structure Plan and is designed to accommodate the creation of adequate useable POS and its integration with the infrastructure requirements of the total land area.

West Canning Vale makes provision for the collection of funds to equalise POS within the DCP area and requires owners to contribute an area of 10.7% of their landholding as POS (either as land or as a cash-in-lieu contribution). This is slightly more than the usual 10% requirement imposed by the WAPC, due to the inclusion of some infrastructure and drainage elements within the POS area.

Where landowners have contributed more than 10.7% to POS, they have been reimbursed from the DCP reserve to equalise the obligation.

All costs in relation to POS have been finalised and result in a surplus balance within the Reserve which is proposed to be refunded to contributing landowners on the same proportionate basis.

Reserve Account and Interest

The Reserve was originally divided into two separate accounts, one for CIW and one for POS. In August 2020 the City moved the POS funds into the CIW Reserve to create a single operational Reserve, which separately identifies movement for both CIW and POS income, expenditure, and interest.

It is noted several items of CIW undertaken by the City incurred costs exceeding the allowances provided for in the DCP. This was either due to increased costs to undertake the works or changes in standards which the works needed to satisfy. As these works were necessary to achieve the DCP's objectives (and the Reserve had accrued sufficient interest to meet the additional costs) it was appropriate for these costs to be met from accrued interest rather than burdening the wider community. A

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total of \$647,870.55 has been spent from accrued interest in the CIW Reserve which includes a portion of the costs set aside to fund the outstanding environmental works.

The closing balance for the DCP Reserve accounts are:

CIW	\$670,081.10	
CIW interest accrued	\$3,075,486.51	(adjusted)
POS	\$135,472.95	
POS interest accrued	\$353,334.94	(adjusted)
Total	\$4,234,375.50	

It is recommended the Reserve balance is returned to contributing landowners in shares proportionate to their contributions. As the spatial contribution areas differ it is necessary to calculate two separate rates of reimbursement. To this end a Transaction Summary Statement (TSS) has been prepared and is attached at Appendix 13.2.5A. The TSS summarises the transactions relating to the Reserve over the operational life of the DCP. The TSS includes the following entries yet to be debited out of the Reserve but shall be distributed at closure:

Outstanding CCW works	\$119,170.33	(\$103,786.04 from interest)
Outstanding claim (Eastview)	\$30,000.00	
2022 audit fee (Administration)	\$950.93	

The closing balances for CIW and POS and adjusted contribution areas have been used to calculate the proposed refunds on a per hectare rate:

Component	Surplus	Contribution Area	Reimbursement Rate
CIW	\$3,745,567.61	44.3406 ha	\$84,472.64/ha
POS	\$488,807.89	49.0023 ha	\$9,975.20/ha

Removing the Head of Power

The enabling provisions for the DCP are contained in Schedule 8 of TPS 6 and following closure of the Reserve the provisions require removal. Discussions with the Department of Planning, Lands and Heritage (DPLH) have revealed the removal of the head of power requires a decision from the Minister and the DPLH will initiate this process following receipt of a Council resolution.

It is therefore recommended Council resolves to request the Minister to remove the head of power from Schedule 8 of TPS 6 on the basis the operational life of the DCP is complete and the DCP and Reserve have closed.

CONCLUSION

The closure of the Reserve and proposed method to refund surplus funds is consistent with SPP 3.6 and the responsible administration of development contribution arrangements. Additionally, the process ensures contributing landowners within the DCP area receive an equitable return from the surplus.

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FINANCIAL IMPLICATIONS

Clause 5.4.16.2 of TPS 6 states:

“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.”

Further, cl 6.10.19(b) of SPP 3.6 states:

“For all other DCPs, the local government is to refund the excess funds to the contributing landowners for that DCA. Prior to distribution of excess funds, owners are to be advised in writing on the extent of excess funds; how the excess funds are intended to be distributed; and the anticipated timing for return of excess funds.”

As previously mentioned in the ‘Background’, the City wrote to contributing landowners on several occasions in 2022 providing information about the closure of the DCP and proposed distribution of surplus funds.

STATUTORY IMPLICATIONS

- Town Planning Scheme No. 6
- State Planning Policy 3.6 – Infrastructure Contributions

As it is Council that adopts the DCP, which is the foundation document that details costs and contributions within a DCP area, the City will formally advise the DPLH of the completion of the DCP and subsequent closure of the Reserve.

VOTING REQUIREMENTS

Absolute Majority required.

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STAFF RECOMMENDATION AND COUNCIL RESOLUTION (1 OF 3)

61 Moved Cr A Hort Seconded Cr A Adams

That Council endorses the credit balance held in the West Canning Vale Development Contribution Plan Reserve be refunded to contributing landowners at a rate of \$84,472.64 per hectare for Common Infrastructure Works contributions and \$9,975.20 per hectare for Public Open Space contributions.

CARRIED BY ABSOLUTE MAJORITY 11/0

FOR: Cr P Abetz, Cr A Adams, Cr C Baayens, Cr G Dewhurst, Cr D Goode, Cr D Griffiths, Cr A Hort, Cr K McDonald, Cr S Williamson, Cr E Zhang and Cr T Lynes.

AGAINST: Nil.

STAFF RECOMMENDATION AND COUNCIL RESOLUTION (2 OF 3)

62 Moved Cr A Hort Seconded Cr A Adams

That Council acknowledges the outstanding claim for drainage infrastructure by Eastview Nominees Pty Ltd and resolves to direct \$30,000 from the Common Infrastructure Works Reserve balance into the Capital Works in Progress Reserve to be available to satisfy the outstanding claim, noting any surplus following settlement of that claim is to be returned proportionately to contributors in the manner set out in the preceding resolution.

CARRIED BY ABSOLUTE MAJORITY 11/0

FOR: Cr P Abetz, Cr A Adams, Cr C Baayens, Cr G Dewhurst, Cr D Goode, Cr D Griffiths, Cr A Hort, Cr K McDonald, Cr S Williamson, Cr E Zhang and Cr T Lynes.

AGAINST: Nil.

STAFF RECOMMENDATION AND COUNCIL RESOLUTION (3 OF 3)

63 Moved Cr A Hort Seconded Cr A Adams

That Council requests the Minister for Planning to remove DCP3, the DCA 3 (West Canning Vale Structure Plan DCA) from Schedule 8 of Town Planning Scheme No. 6 on the basis the City has finalised the West Canning Vale Development Contribution Plan and closed the associated Reserve account.

CARRIED BY ABSOLUTE MAJORITY 11/0

FOR: Cr P Abetz, Cr A Adams, Cr C Baayens, Cr G Dewhurst, Cr D Goode, Cr D Griffiths, Cr A Hort, Cr K McDonald, Cr S Williamson, Cr E Zhang and Cr T Lynes.

AGAINST: Nil.