

DRAKENSTEIN MUNICIPALITY



DEVELOPER CONTRIBUTIONS POLICY

APPROVED 26 MAY 2010

INTERIM POLICY

Background

In the interim and until such time as the legislative framework confers the appropriate empowering provisions, the following procedure / policy is suggested in order to mitigate the difficulties experienced at present. This will function as an internal policy for the guidance of officials.

Bulk Infrastructure Contribution Levies / Bulk Services Levies have been introduced at most local authorities to allow developers to contribute to the upgrading of bulk services required for such development for such development and to proceed with developments that could take place if such contributions were not made. Engineering services for Drakenstein area are at capacity and upgrades are required to accommodate further developments are the same as for bigger developments and there is a limit to the densification / developments that can be approved unless either major additional funding is provided or a contribution made to implement service capacity upgrades.

Objectives

Procedures

1. Where the payment of money for municipal services is required in terms of section 42 Land Use Planning Ordinance 15 of 1985, the amount for each service must be negotiated by the applicant and Council officials. The negotiation must taken place prior to a report being written on the merits of the development.

A written record of these meetings must be kept and as well as the date on which agreement was reached, the amount payable for each service (including escalation costs if necessary) and the date at which these amounts are payable. Officials should strive to calculate the direct costs of the infrastructure.

Once the amounts for all the required services are agreed upon, both the owner of the land and the developer (if parties differ) must sign an acknowledgment of debt form which is being drawn up by the legal department. The amounts which have been agreed upon will be described in the recommended condition of approval and will refer to the acknowledgement of debt which will be attached

to the planning report. The developer will still be able to exercise rights of appeal if he or she so wishes.

2. In cases where no agreement is reached between the applicant and Council officials on the amount of money to be paid for each services as set out in section 42, then officials must endeavour to calculate the amount required for each service on a case by case basis, bearing in mind the requirements of section 42 of LUPO and using available impact assessments this amount must be recorded in the recommended conditions of approval as well as the date at which the amounts become payable.

If the decision making body of Council approves this development, then these amounts conditions of approval. The developer/owner will have the right to appeal these conditions to the appeal authority constituted in terms of section 62 of the Municipal Systems Act and section 44 of the Land Use Planning Ordinance no 15 of 1985.

3. In cases where services cannot support the nature of the development, and developer would be required to pay a monetary contribution which exceeds the "directly related" requirement, a different strategy has been suggested by Council officials. In many areas, developers have been advised that they cannot develop their land since there are either no municipal services to the area or the current services network is being used to full capacity.

There is no legal obligation on Council to provide municipal services to land simply because the owner wishes to develop his or her land. Section 152 of the Constitution emphasises the fact that Council must structure its administration and budgeting and planning processes to give priority to the basic needs of the community.

Chapter 5 of the Municipal Systems Act no 32 of 2000 (the Systems Act) requires municipality to adopt an integrated development plan for the development of the municipality. This document aligns the resources and the capacity of the municipality with the implementation of the plan and forms the policy framework and general basis on which annual budgets must be based.

A Municipality is required in terms of the Systems Act to undertake developmentally orientated planning. "Development" is defined as sustainable development, and which includes integrated social, economic, spatial, infrastructural, institutional, organisational and human resources upliftment of a community aimed at-

- (a) Improving the quality of life of its members with specific reference to the poor and other disadvantaged sections of the community; and

(b) Ensuring that development services present and future generations.

Therefore, Council's expenditure on infrastructure will be guided by the IDP and will be aimed primarily, but not solely, on the provision of basic services. Additional expenditure for services in other areas, where there is no reserve created by development contributions will therefore have to wait in line until there is additional funding available.

If a developer wishes to develop outside the programme developed by Council he or she will have to fund the provision of services to enable development to take place. It is acknowledged that in some cases the requirements to fund such infrastructure may to some extent, fall outside the parameters of section 42. If, for example, installation of a new stormwater pipe is required as a result of the development in question, but only 70% of the capacity of the pipe will be used as a result of that particular development, the City may require the developer to nevertheless pay the full costs of construction and installation of the pipe. However, the developer is in the position that he can wait for Council to develop the land and pay a contribution as set out in LUPO, or he can agree voluntarily to pay the additional costs and apply for development rights immediately. In some instances it may be possible to spread the costs of such services across a number of developers.

It is important that developers in all areas must be treated in the same manner. And in all cases where there are no municipal services or the services are insufficient to develop the area, the developers are given the same option.

In the event that the developer chooses to pay for all the services, the amounts for each of the services required for the development must be negotiated. Again a written record must be kept of all negotiations which take place as well as the amounts which have been agreed upon and the date on which these amounts must be paid. These negotiations must take place prior to the development application being assessed. These amounts must then be set out in an acknowledgment of debt which is being developed by the Legal office. In order to prevent a situation where a shell company signs the acknowledgment of debt, both the owner of land and the developer will be required to sign this acknowledgment of debt. The conditions of approval will note that an acknowledgment of debt has been signed. The body of the report must indicate that an agreement has been reached with the owner/developer and that an acknowledgment of debt has been signed.

In cases, where the owner/developer does not wish to pay for all services, the body of the report dealing with the development application will need to assess the level of services available, and if insufficient services are available, there will be, in most cases a

negative recommendation to the committee responsible for considering the development.

It is also important to note that if the calculation of the monetary contribution towards services falls outside the parameters of section 42 of LUPO, it will not be possible to use the provisions of sections 31 of LUPO to require payment of these sums prior to transfer in the case of subdivision. It is therefore incumbent on the officials to ensure that the acknowledgments of debt are kept in a safe place, that it clearly stipulates when the amounts are payable and that someone ensures that payment is made on the date it is due.

Please note that the Municipal Finance Management Act has no impact on this report.