

Code name	Development Contributions – Requests for Refund
Responsible manager(s)	Management Accountant
Contact officer(s)	Development Contributions Administration Officer
Directorate	Finance and Business Development
Approval date	27 August 2013
Community strategic plan objective	8. We work together to achieve our goals
Delivery program	Finance and Governance
Operational plan	Provide integrated corporate accounting and financial management systems and procedures

Intention and purpose

Development Contributions are typically paid to Eurobodalla Shire Council in association with a development consent. From time to time and in various circumstances Council receives requests to refund Development Contributions that have already been paid. Most Development Contributions received by Council are legally mandated to be a Restricted Asset, thereby removing Council's discretion to refund.

The purpose of this Code is to establish clear procedures for Council to ensure requests for refund of Development Contributions are processed consistently and in accordance with relevant legislation, case law and practice notes. This Code is intended to provide:

- consistency in the processing of requests for refunds of Development Contributions;
- compliance with legislative requirements;
- conformity to relevant case law;
- a readily accessible and understandable context for consideration of a request for refund of Development Contributions.

Code details

1	Application This policy applies to requests for refunds of Development Contributions that have been paid to Eurobodalla Shire Council.
2	Legislation Council complies with the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Recovery of Imposts Act 1963</i> .
3	Finance Authorisation (a) Refunds are considered a 'write-off', which may be made only by staff with delegated authority. (b) All requests for refunds must be referred in the first instance to the Development Contributions Administration Officer or the Financial Accountant. (c) Finance staff will consult the Divisional Manager, Water & Sewer in respect of requests for refunds relating to Development Contributions for water and sewer infrastructure.
4	Written Request No request for refund of Development Contributions will be considered unless it is received in writing.

5	<p>Statute of Limitations</p> <p>(a) In accordance with sections 2(b) and 5 of the <i>Recovery of Imposts Act 1963</i>, no request for refund of Development Contributions will be considered if it is made more than 12 months after the relevant date of payment.</p> <p>(b) The date of the request is deemed to be the day the request is received by Council.</p> <p>(c) The date of payment is deemed to be the date on Council's official receipt for payment of the relevant Development Contribution(s).</p>
6	<p>Restricted Contributions</p> <p>(a) Development Contributions collected and pooled towards the provision of public infrastructure are Restricted Assets and cannot be used other than as set out in the respective Development Contributions Plan.</p> <p>(b) Council cannot refund such Contributions, because they are subject to a statutory trust for the public purposes for which the Contributions were required.</p> <p>(c) Refunds of Development Contributions are therefore not available merely because a Development Application has lapsed or been abandoned.</p> <p>(d) It is reasonable in such circumstances that Council attach to the subject property a credit towards Development Contributions required under any subsequent Development Application.</p>
7	<p>Unrestricted Contributions</p> <p>(a) Development Contributions towards the recovery of infrastructure costs previously incurred by Council form part of general revenue and are not a Restricted Asset.</p> <p>(b) Council may consider a request for refund of such unrestricted Development Contributions and – subject to items 1, 2 and 3 above – such a request will be considered on its merits.</p>
8	<p>Overpaid contributions</p> <p>In circumstances where a typographical or calculation error has resulted in the overpayment of Development Contributions, it is reasonable to consider the Contribution is a Restricted Asset only to the extent of the correct amount.</p> <p>Accordingly, that part of the Development Contribution(s) that represents an overpayment is not a Restricted Asset and – subject to items 3, 4 and 5 above – may be refunded.</p>
9	<p>Addition of interest</p> <p>(a) It is fair and reasonable that where a refund of Development Contributions is made, interest be accrued for the period between the date of payment and the date of refund.</p> <p>(b) The advice of Council's Development Contributions Administration Officer is to be sought regarding the calculation of interest.</p> <p>(c) Calculation of interest will be based on the 90-day Bank Bill Swap Rate during the relevant period, with an upper limit of Council's portfolio return.</p>

Review

This Code will be reviewed every 4 years when the associated Policy is reviewed.

This Code may also be reviewed and updated as necessary when legislation requires it; or Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages refunds of development contributions.

Reviews of the effectiveness of this Code may include the following:

Performance indicator	Data source(s)
Concerns or Complaints registered	Council records
Customer Feedback Survey Responses	Surveys
Internal or external review	Audit
Compliance with relevant legislation, case law & practice notes	Development Contributions register

Governance

This Code should be read in conjunction with any related legislation, policies, codes of practice, external references, and/ or guidelines.

Related legislation and policies

Name	Link
Development Contributions – Request for Refunds Policy	www.esc.nsw.gov.au/inside-council/council/council-policies
Water and Sewerage Headworks Policy	www.esc.nsw.gov.au/inside-council/council/council-policies
<i>Local Government Act 1993</i>	www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/
<i>Recovery of Imposts Act 1963</i>	www5.austlii.edu.au/au/legis/nsw/consol_act/roia1963247/
<i>Environmental Planning and Assessment Act 1979</i>	www5.austlii.edu.au/au/legis/nsw/consol_act/epaaa1979389/

Related external references

Name	Link
Office of Local Government	www.olg.nsw.gov.au
Department of Planning and Infrastructure - Development Contributions practice notes	www.planning.nsw.gov.au/planningsystem/pdf/all_contributions_pns.pdf
Case law (NSW Court of Appeal) - Frevcourt Pty Limited & Anor v Wingecarribee Shire Council [2005]	www.austlii.edu.au/au/cases/nsw/NSWCA/2005/107.html
Case law (NSW Land and Environment Court) - Denham Pty Limited v. Manly Council [1995]	www.austlii.edu.au/au/cases/nsw/NSWLEC/1995/198.html
Case law (NSW Court of Appeal) - Baulkham Hills Shire Council v Wrights Road Pty Limited [2007]	www.austlii.edu.au/au/cases/nsw/NSWCA/2007/152.html

Definitions

Word/Term	Definition
Development Contribution	A contribution paid towards the provision of public infrastructure in accordance with section 93F, 94 or 94A of the <i>Environmental Planning & Assessment Act 1979</i> , or section 64 of the <i>Local Government Act 1993</i> .
Restricted Asset	Funds held by Council that are restricted by legislation in their utilisation.

Change history

Version	Approval date	Approved by	Min No	File No	Change
1	28 Aug 2007	Council	07/244	06.0381	Refunding Developer Contributions Policy adopted by Council (doc 53005.07)
2	27 Aug 2013	CFO	13/246	E13.7095 E06.0381	New Code developed to support updated Policy. Policy adopted 27 Aug 2013, min 13/246, report O13/131.

Internal use

Responsible officer		Director Finance and Business Development		Approved by	Council
Min no	13/246	Report no	O13/131	Effective date	27 Aug 2013
File No	E13.7095 E06.0381	Review date	Sep 2016	Pages	4