

**PART 11 - DISTRICT DISTRIBUTOR ROAD INFRASTRUCTURE
CONTRIBUTIONS ARRANGEMENTS CELLS 1 TO 4 CLARKSON/BUTLER
PLANNING DISTRICT**

11.1 Area of Cells

The provisions of Part 11 shall apply to the land contained within the black line as shown on Map 1 in Schedule 10 (hereinafter referred to as the Clarkson/Butler Planning District). The Clarkson/Butler Planning District is broken into four (4) Cells delineated by the broken black line on Map 1 in Schedule 10.

11.2 Definitions

The following definitions apply to this Part:

“Cell” or “Cells” mean those parts of the Scheme area located in the Clarkson/Butler locality of the City’s District, as set out in Map 1 in Schedule 10.

“Cell Works” are those works required for the construction of District Distributor Roads and Pedestrian Crossings described in Schedule 10 or as agreed to by the Council and the Western Australian Planning Commission.

“Contributing Landholding” - refers to the total area of the landholding of a Landholder in a Cell contributing to Cell Works as described in the table in Schedule 10.

“District Distributor Roads” are those roads generally comprising portions of Marmion Avenue, Connolly Drive, Neerabup Drive, Hester Avenue and Lukin Drive generally shown on Map 1 in Schedule 10.

“Infrastructure Contributions” for the purposes of Part 11 means the contribution of a landowner towards Cell Works comprising District Distributor Road works or cash payments and Pedestrian Crossings works or cash payments together with the Landowner’s proportion of Incidental Cell Works Costs calculated in accordance with this Part.

“Landowner” or “Landowners” refers to the registered proprietor’s of the contributing landholdings within Cells 1 to 4 as described in the table in Schedule 10, or their successors in title.

“Pedestrian Crossings” means the grade separated or if agreed to by the local government and the Commission, at grade, traffic controlled pedestrian crossings constructed on parts of the District Distributor Roads as described in Schedule 10.

11.3 Objective

The objective of the Part 11 provisions is to provide a simple framework for Landowners of Contributing Landholdings to meet their pro-rata ‘area’ based Infrastructure Contributions within each Cell through the construction of their Cell

Works in accordance with a timing and staging strategy which they may determine to the satisfaction of the Council.

11.4 Landowner Contributions

Landowners shall make Infrastructure Contributions as outlined in this Part.

11.4.1 District Distributor Road Contributions

11.4.1.1 Subject to the satisfaction of the Council, Landowners within each Cell may determine the order and manner in which construction of District Distributor Roads is carried out within a particular Cell.

11.4.1.2 Notwithstanding subclause 11.4.1.1, the Council may determine the order and manner in which that construction is to be carried out and may, if necessary, appoint contractors to carry out such works where it considers it appropriate to do so.

11.4.1.3 Unless otherwise determined by the Council, wherever possible, the District Distributor Roads will be constructed by Landowners adjacent to their Contributing Landholding.

11.4.2 Calculation and Apportionment of Infrastructure Contributions District Distributor Road Component.

11.4.2.1 Calculation of Gross Area of a Cell

The gross area of a Cell is the total area of the Contributing Landholdings in a Cell.

11.4.2.2 Formula for Infrastructure Contributions

The Infrastructure Contribution to be made within each Cell toward providing District Distributor Roads shall be in accordance with the following formula:

(A divided by B) multiplied by C equals D or $(A \div B) \times C = D$

Where:

A	=	Area of Contributing Landholding
B	=	Gross area of the Cell
C	=	The total length of District Distributor Roads within a Cell
D	=	Total length of Landowner's District Distributor Road Infrastructure Contribution

11.4.3 Timing of Infrastructure Contributions for District Distributor Roads

Landowners will meet their Infrastructure Contributions for District Distributor Roads through construction of these roads.

- 11.4.3.1 Unless otherwise agreed by the Council in writing, Infrastructure Contributions for District Distributor Roads shall be constructed prior to Council providing written advice to the Commission confirming that conditions relating to the subdivision or amalgamation have been completed to enable the Commission to endorse its approval to the relevant plan or diagram of survey pursuant of Regulation 10 of the Western Australian Planning Commission Regulations 1962 or as otherwise required of the relevant local government or the Commission under the Strata Titles Act 1985 and its Regulations in the case of strata subdivision (hereinafter referred to as clearance).
- 11.4.3.2 Council may from time to time accept a part contribution from Landowners as a payment towards their Infrastructure contribution. The amount of the part contribution is to be determined by the Council and will be based on the proportion that the total area of the Landowner's land the subject of the relevant clearance bears to the whole of the Landowner's Contributing Landholding in a Cell, applied to the relevant Infrastructure Contribution for District Distributor Roads to be constructed by that landowner.
- 11.4.3.3 Notwithstanding subclause 11.4.3.2, Landowners must construct 50% or more of the total District Distributor Roads representing part of their Infrastructure Contribution prior to 50% of their Contributing Landholding having received clearance by the Council as described in 11.4.3.1.
- 11.4.3.4 Subject to subclause 11.4.3.3, the Council may accept additional part contributions as described in subclause 11.4.3.2 prior to 90% of the Contributing Landholding having received clearance by the Council as described in subclause 11.4.3.1 at which point the Landholder must construct its total District Distributor Roads component of the Infrastructure Contribution.
- 11.4.3.5 Unless otherwise agreed to by the Council, should a Landowner not construct District Distributor Road's as detailed in subclause 11.4.3, the Council may use any payments previously received from that Landowner for the construction of District Distributor Roads within the relevant Cell.
- 11.4.3.6 Upon the satisfactory construction of District Distributor Road by a Landowner, Council shall return to the Landowner any payments previously received from that landowner as part contribution for that portion of District Distributor Road.

11.4.4 Pedestrian Crossing(s) Contributions

- 11.4.4.1 Subject to the satisfaction of the Council, Landowners within each Cell may determine the order and manner in which construction of Pedestrian Crossings is carried out within a particular Cell.
- 11.4.4.2 Notwithstanding subclause 11.4.4.1, the Council may determine the order and manner in which that construction is to be carried out and may, if necessary, appoint contractors to carry out such works where it considers it appropriate to do so.
- 11.4.4.3 Unless otherwise determined by the Council, wherever possible Pedestrian Crossings will be constructed by Landowners adjacent to their Contributing Landholdings.

11.4.5 Calculation and Appointment of Pedestrian Crossings Contributions.

11.4.5.1 Calculation of Gross Area of a Cell

The Gross Area of a Cell is the total area of the Contributing Landholdings in a Cell.

11.4.5.2 Formula for Contributions

The Infrastructure contribution to be made by each landowner within a Cell to Pedestrian Crossings shall be in accordance with the following formula:

(A divided by B) multiplied by E equals F or $(A \div B) \times E = F$

Where:

A	=	Area of Contributing Landholding
B	=	Gross area of the Cell
E	=	The total number of Pedestrian Crossings within a Cell
F	=	Total Landowner Pedestrian Crossing Infrastructure Contribution.

11.4.6 Timing of Pedestrian Crossings Contributions

- 11.4.6.1 Pedestrian Crossings Infrastructure Contributions shall be made on the same basis as District Distributor Road Contributions as outlined in subclauses 11.4.3.1 - 11.4.3.2.
- 11.4.6.2 Notwithstanding subclause 11.4.4.2, Pedestrian Crossings should be constructed at the time that the District Distributor Road within which the Pedestrian Crossing is situated is constructed and that construction will be undertaken by the

landowner(s) constructing that portion of the District Distributor Road.

- 11.4.6.3 Where a Pedestrian Crossing has been constructed pursuant to subclause 11.4.6.2, Infrastructure Contributions for that Pedestrian Crossing shall be determined by the Council as a proportion that each contributing landholding bears to the total area of the Cell. Unless otherwise agreed to by the Council, Contributing Landowners will compensate the constructing landholder based on the above proportional contribution within 6 months of the completion of construction to the satisfaction of Council.
- 11.4.6.4 Council may, at its discretion, accept a cash payment from a landowner to extinguish all or part of that Landholders Infrastructure Contribution for Pedestrian Crossings within a Cell.
- 11.4.6.5 Council may, at its discretion, use cash payments already received as Infrastructure contributions within a Cell for the purposes of constructing Pedestrian Crossings within that Cell.

11.5 General Provisions

11.5.1 Consultative Committee

Council may form a Consultative Committee for each or all Cells comprising of Landowners, representatives of Council and the Western Australian Planning Commission and any other persons considered appropriate by Council to make recommendations to Council in respect to timing and arrangements for Cell Works.

11.5.2 Retrospective Payment of Infrastructure Contributions

Subject to the agreement of the Western Australian Planning Commission Council may retrospectively obtain payment from any landowner where the appropriate Infrastructure Contribution payment as required by Clause 11.4.3.1 or 11.4.6.1 was inadvertently not required or made.

11.5.3 Payment of Excess Over Estimate

Landowners in a Cell who, prior to the publication of final approval of Amendment No. 821 to Town Planning Scheme No. 1 in the Government Gazette have either constructed Cell Works or made a cash payment towards such works based on preliminary estimates will be required, after Amendment No. 821 came into effect and when Infrastructure Contributions have been determined, to provide further Cell Works or payments which represent the difference between the preliminary contribution and the amount of the landowner's contribution calculated at the time Amendment No. 821 came into effect.

In such circumstances Landowners shall make the further contribution stipulated by Council within 6 months of the date of the request or in accordance with other arrangements agreed to by Council.

11.5.4 Compensation for Over provision

Unless otherwise determined by the Council, should a Landowner be entitled to credit where the value of any constructed Cell Works or payment of those works exceeds the total Landowners contribution at the time Amendment No. 821 came into effect, then the difference shall be calculated by the Council and that Landowner reimbursed either by cash payment paid proportionately by the remaining Landowners within the Cell or via some other arrangements agreed to by the Council.

11.5.5 Recoverability of Infrastructure Contributions

Any overdue Landowner Infrastructure Contributions relating to land in a Cell shall be a liquidated debt due to the Council by the landowner of such land and may be recovered by the Council in a court of competent civil jurisdiction.

11.5.6 Additionally, any Infrastructure Contributions relating to land in a Cell which are due but not met shall be a charge on that land and the Council may lodge a caveat against the title of the land in respect thereof. The Council may at the cost of the Landowner and subject to such other conditions as Council considers appropriate, withdraw a caveat to permit dealings and thereafter relodge the caveat to prevent further dealing until such costs are paid. Upon the completion of the Landowner Contributions in respect of such land and upon receiving a request in writing the Council shall withdraw any such caveat which it has lodged on the title at the expense of the landowner.

11.5.7 Arbitration

11.5.7.1 Pursuant to subclauses 11.4.6.4, 11.5.3 and 11.5.4, in the event where a landowner and the Council are unable to agree to the amount of a cash payment required under these parts then the matter is to be referred to the arbitration of a single arbitrator in the manner provided by the Commercial Arbitration Act, 1985.

11.5.7.2 If the parties are unable to agree upon the arbitrator, the arbitrator may be nominated by the President for the time being of the Royal Australian Institute of Civil Engineers (or its successor) on the application of any party. The costs of each party involved in the arbitration process will be borne by that party, however, in the case where the arbitrator believes an objection to be frivolous or where a party has unnecessarily frustrated the process of arbitration, the arbitrator may, at his discretion, award the costs against the erring party.

11.5.8 Financial Records

- 11.5.8.1 In the case where cash payments are received for Infrastructure Contributions within a Cell, the Council shall for the purpose of properly managing the implementation of Cell Works for each Cell, establish Cell Accounts for the Cell into which cash payments from Landowners of land within that Cell which are made in accordance with this Part will be credited and from which required payments for Cell Works will be paid.
- 11.5.8.2 The Cell Accounts shall be maintained in accordance with the provisions of the Local Government (Financial Management) Regulations 1996 and shall be audited on an annual basis. Council shall make available for inspection to any landowner on request, a detailed statement of accounts for that Cell.
- 11.5.8.3 The Council may (but is not obliged to do so) raise loans or provide funds from other sources for the purpose of providing the finance necessary for the implementation of the designated Cell Works and any interest or charges incurred in doing so will be deemed to be a cost which will form part of the Cell Works.