

**Kilkenny City Western Environs
Development Contribution Scheme**

Section 48 – Development Contribution Scheme for the Kilkenny County Council Kilkenny City Western Environs Area

Introduction:

Section 48 of the Planning & Development Act 2000, enables Local Authorities, when granting a permission under Section 34 of the Act, to include conditions requiring the payment of a contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority, and that is provided, or that it is intended will be provided, by or on behalf of a local authority, (regardless of other sources of funding for the infrastructure and facilities).

The types of public infrastructure and facilities that can be funded by this mechanism are:

- (a) The acquisition of land,
- (b) the provision of open spaces, recreational and community facilities and amenities and landscaping works,
- (c) the provision of roads, car-parks, car-parking places, sewers, wastewater and water treatment facilities, drains and watermains,
- (d) the provision of bus corridors and lanes, bus interchange facilities, infrastructure to facilitate public transport, cycle and pedestrian facilities, and traffic calming measures,
- (e) the refurbishment, upgrading, enlargement or replacement of roads, car-parks, car-parking places, sewers, wastewater and water treatment facilities, drains or watermains, and
- (f) any matters ancillary to paragraphs (a) to (e).

Area to which the scheme shall apply

A planning authority may make one or more schemes in respect of different parts of its functional area; Kilkenny County Council has prepared this scheme in respect of the area covered by the Kilkenny City Western Environs Local Area Plan, adopted by Kilkenny County Council on 17th May 2004 and delineated on the attached map1. On the adoption of this draft scheme, then the provisions of the existing Kilkenny County Council Development Contribution Scheme, will no longer apply in the Western Environs Area.

Period of Western Environs Development Contribution Scheme

This scheme will be effective from the 1st January, 2009 until the 31st December, 2009. A more substantive review of development in the Western Environs area and the implementation of the Western Environs Local Area Plan will take place during 2009 and a revised plan will be drafted for implementation in 2010.

**Development Contributions Applicable from the 1st January 2009 to
31st December, 2009**

Description of Development	Amount of Contribution (per m ² of development area unless otherwise specified)
1. Residential – Roads & Recreation + Water + Wastewater	€147
2. Commercial, Industrial & Retail– Roads & Recreation + Water + Wastewater	€147
3. Shortfall in car parking provided	€3,342 per space
4. Development not coming within any of the foregoing classes	€147

The proposed charge of €147 for 2009 reflects the revisions to the original charge of €132, adopted in 2005, such revisions being made in accordance with the wholesale price index as per data supplied by the Central Statistics Office.

Note A

Any residential extension up to 40 sq. m. in floor area is exempt from development contribution. Where a residential extension exceeds 40 sq. m. in floor area then the normal development contribution charge applies to the entire floor area, including the first 40 sq. m.

Conversion to Residential Units

A contribution will be charged in respect of any additional residential units created in accordance with the scheme.

Exemptions/ Reductions

The Council may grant exemption from, or reduce the amounts of, contribution in respect of the following categories of development;

- (1) Where a planning permission is issued for a development which consists of or comprises development which in the opinion of the County Manager is development proposed to be carried out by or on behalf of a voluntary organisation, and is not residential accommodation, and which in the opinion of the County Manager
 - (a) Is designed or intended to be used for social, recreational, educational or religious purposes by the inhabitants of a locality or by people of a particular group or religious denomination and is not to be used mainly for profit or gain
 - or
 - (b) Is designed or intended to be used as a workshop, training facility, hostel or other accommodation for persons with disabilities and is not to be used mainly for profit or gain,

then the only development charge payable will be 80% of the water services element of the overall development charge payable.

Schools

Where an application relates to a school development, full charges in relation to water services will be payable where the school is availing of a grant from the Department of Education & Science for the works being carried out.

If the school can provide proof that the works are being carried out without grant aid, then they will be charged 80% of the water services development charge.

- (2) Where a proposal relates to a residential development for which a Disabled Persons Grant will be received, then the only development charge payable will be 80% of the water services element of the overall development charge payable.
- (3) Where a proposal consists of or comprises the provision of houses, or development ancillary to such provision, which is proposed to be carried out under Section 179 of the Planning and Development Act, 2000 (as amended) a development contribution shall not be payable.
- (4) Where a proposal consists of the provision of housing and includes a condition providing for the applicant to enter into an agreement under Section 96 of the Planning and Development Act, 2000 as substituted by Section 3 of the Planning and Development (Amendment) Act, 2002 a development contribution shall not apply to residential units provided for use by Kilkenny County Council/Kilkenny Borough Council under such an agreement.

- (5) Where a proposal consists of the provision of housing by a voluntary housing body, as defined in Section 6 of the Housing (Miscellaneous Provisions) Act, 1992, then no development contribution shall be payable.
- (6) Where a planning permission is issued relating to development on a protected structure, included in the Kilkenny County Council Record of Protected Structures, as established under Part IV of the Planning and Development Act, 2000 (as amended), then a reduction of 75% from the normal development charge applicable to the protected structure will apply.
- (7) Where a proposal consists of development by a tax registered charitable institution, then only the water services element of the normal development charge is payable.
- (8) Where a proposal includes the provision of a stand alone garage of less than 25m², then no development charge is payable on the garage element of the development.
- (9) Where a proposal includes agricultural/horticultural polytunnel development, then 20% of the Category 10 Agricultural Development charge will be payable for those elements of the development relating to agricultural/horticultural polytunnels.
- (10) Where a proposal consists of development that will be serviced by a group water or waste water scheme that is itself serviced by a public supply, then such applicants will be allowed credit against the water or waste water element of any development charges payable for any contributions already paid by them to the group water or waste water scheme concerned, subject to a maximum credit of 50% of the relevant development charge payable.

Basis for determination of Contributions

In determining contribution levels, regard has been had to the objectives and strategies of Kilkenny County Council. In particular, regard has been had to, among other sources, the County Development Plan, The Western Environs Local Area Plan, and The Kilkenny Western Environs Infrastructure Guidance Document.

In summary, the methodology used to arrive at the projected contribution of €147 per m² of development activity was as follows:

- 1) Estimate the gross infrastructural costs for the WEA - €62.8m as per attached Appendix 1. Originally, the Kilkenny Western Environs Infrastructural Guidance Document identified gross costs of €61.4m for the WEA; this estimate was subsequently amended to €62.8m.
- 2) Estimate Government Funding towards the gross infrastructural costs - €10.5m. This leaves a net requirement for local funding of €52.3m (€62.8m - €10.5m)
- (3) Discount from the net funding requirement of €52.3m for the WEA, any benefit which accrues to areas outside of the WEA - €8.7m.
- (4) The resulting net WEA infrastructure costs are €43.6m (€52.3m - €8.7m) to which are added projected funding costs (see Note A) of €10.4m giving a cost of €54m before addition of 5% contingency (See Note B) of €2.7m to give total costs of €56.7m.
- (5) This total cost of €56.7m will be recovered over the total projected development area of 429,135m² (see Note C) for the WEA thereby giving a charge of €132 per m² which, when adjusted in accordance with the changes in the wholesale price index since 2005 (base rate 135.7 Nov. 2004 increased to 155.7 Nov. 2007), gives a charge of €147 per m² (€56.7m/429,135m²).

Note A – Projected Financing Costs

It is anticipated that the infrastructure required in the WEA will be put in place as development proceeds. Kilkenny County Council will be required to put in place the infrastructure necessary for each development block/parcel before development activity can actually take place within the individual block. As a result, Kilkenny County Council will be incurring the financial cost associated with the infrastructure provision until such time as development starts and development contributions start to be received. This financing cost has been estimated at a total of €10.4m over the years 2004 to 2020 (based on an assumed interest rate of 4.5%).

Should, as noted in Section 3.11 Development Levies of the adopted LAP, an agreement be reached between the applicant and the Council that certain of the infrastructure contained in the gross infrastructural costs for the WEA of €62.8m above be provided by the applicant, then not alone will the agreed infrastructural cost be offset against the development levies charged but allowance will also be given for the associated financing cost. Any such agreement is dependant upon Kilkenny County Council being satisfied as to the construction standard, and capability, of the company nominated by the developer to carry out such work.

Note B – Contingency

All infrastructure costs quoted are based on the Kilkenny Western Environs Infrastructural Guidance Document. This document:

1. Identifies the local infrastructure required to service development in the Plan Area.
2. Assesses the enhancements of elements of existing infrastructure, required within the Plan Area and in the City and Environs, to support such development.
3. Includes indicative infrastructural designs and layouts in respect of roads, water supply, foul sewers and storm sewers, electricity supply, gas supply and telecommunications networks.

Note C – Total Projected Development Area for the WEA

The total projected development area for the WEA has been estimated as follows:

	Hectares	M ²
<i>Commercial/Village Centre Zone</i> (assumed average plot ratio of 1.5 on the 5.4 hectares in the zone with 40% of this area residential i.e. 32,4000m ²)	5.4	81,000
<i>Residential</i> (assumed housing unit density at midpoint of density ranges identified in LAP for individual parcels: this yields 2,888 units at an assumed average size of 105m ² per unit = 303,135m ²)	82.0	303,135
<i>School Campus/Reserved Site Area</i>	<u>6.4</u>	<u>45,000</u>
Total Development Area	<u>93.8</u>	<u>429,135</u>

“Road” Definition

The term “Road” has the same meaning as defined in Section 2(1) of the Roads Act, 1993.

Method of payment of contribution

Contributions shall be payable immediately upon development commencement. At this time, the contribution payable will be based on the contribution rate then in existence and not the contribution rate in existence at the time of permission being granted. Should there be a delay of greater than 2 months in payment of the contribution, then the Council shall be entitled to charge interest from the date payment was due, to the actual payment date, at a rate of 5% per annum.

However, in cases where a development is being carried out in phases, the contribution may be paid in installments before the commencement of each phase. The prior agreement of the Council will be required to any such agreement. The contribution payable upon each installment will be based on the contribution rate then in existence, and not the contribution rate in existence at the time of permission being granted.

Adjustment of contribution amounts

The contribution rates payable will be adjusted six monthly, commencing on 1st January, 2006, based on changes to the Wholesale Price Index for Capital Goods, Building & Construction published by the Central Statistics Office. The base period, against which changes in the Wholesale Price Index for Capital Goods, Building & Construction will be compared, will be the month of adoption of this Development Contribution Scheme.

In the case where the adjusted charge is not a whole number, then the charge will be rounded up or down to:

- (1) the nearest Euro where the charge is per m² of development area
or
- (2) the nearest €100 in all cases other than in (1)

Exceptional Costs

Kilkenny County Council may, in addition to the terms of this scheme, require the payment of a special contribution in respect of a particular development where specific exceptional costs not covered by this scheme are incurred by Kilkenny County Council in respect of public infrastructure and facilities which benefit the proposed development. Such special exceptional costs can only be in respect of public infrastructure and facilities not identified in the Kilkenny Western Environs Infrastructural Guidance Document. Where payment of such a special contribution is required, the condition shall specify the particular works carried out or proposed to be carried out by Kilkenny County Council to which the contribution relates.

Where the works in question;

1. Are not commenced within 5 years of the date of payment to Kilkenny County Council of the contribution,
2. Have commenced, but have not been completed within 7 years of the date of payment to Kilkenny County Council, or
3. Where Kilkenny County Council decides not to proceed with the proposed works or part thereof,

the contribution shall be refunded to the applicant together with any interest that may have accrued over the period while held by Kilkenny County Council. However, where Kilkenny County Council has incurred expenditure within the required period in respect of a proportion of the works proposed to be carried out, any refund shall be in proportion to those proposed works which have not been carried out.

An applicant may, subject to the agreement of Kilkenny County Council, undertake the specific works, to which the specific exceptional costs relate, in lieu of special contribution payment. Such an agreement may allow for the works to be carried out to Kilkenny County Council specified standards and supervision arrangements.

If a developer is required to provide services over and above his own immediate needs, then he can be compensated. This is in accordance with legislation as outlined in Section 34(2)(m) of the Planning and Development Act, 2000.

Offsetting and Offsetting Procedures

The Council has always envisaged that there will be certain infrastructure which is capable of being delivered by developers and the Council is positively disposed towards developers providing such infrastructure. However, the Council will first have to be satisfied that the developer concerned can provide the infrastructure involved to the required standard. Once the Council is satisfied in this regard, then the developer will be allowed an “offset allowance” against any development charges that may be payable upon his development. This offset allowance will have both infrastructure and finance cost elements to it.

The Council retained Malone O’Regan/Scott Wilson, Consulting Engineers to prepare the final detailed infrastructural cost associated with the Western Environs Area (WEA) within which each infrastructural element was individually costed. These detailed infrastructural costs are publicly available to determine the infrastructural element of any offset allowance in relation to developer provided infrastructure. This infrastructure element of the offset allowance will have added to it a further 25%, being the financing element of any offset allowance. Within the draft WEDCS, the proposed charges of €147 per m² are made up as follows:

80% Infrastructure Cost : 20% Financing Cost

Where developers provide infrastructure, then the Council will not incur any financing cost on that infrastructure. Accordingly, credit must be given for this on top of the infrastructure cost.

The full offset allowance will therefore be the total of both infrastructure and financing cost elements. For example, assume:

1. An individual development is granted planning permission which attracts a development charge of €2m (as per final adopted WEDCS).
2. The developer concerned wants to provide certain of the required WEA infrastructure and the Council agrees with the developer so doing; this infrastructure is costed at €0.4m (as per final Malone O’ Regan/Scott Wilson report).
3. Offset allowance will be €0.4m + (25% of €0.4m) = total of €0.5m.
4. Development charges actually payable by developer to Council will be €1.5m (€2m - €0.5m).

As seen above, the Council will give the appropriate offset allowance for any developer provided infrastructure.

In such a scenario, the offset amount will have to represent the full and final allowance available to a developer i.e. if a developer agrees to take on the provision of certain infrastructure in return for an agreed offset allowance, then this represents the full and final payment to that developer for the infrastructure concerned i.e. there can not be any subsequent cost escalation claims.

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