

10.8 Deferral of Development Contributions - Ferngrove



Mr Paul Hickey
The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

3 August 2011

Dear Paul

**RE: Rayshield Pty Ltd (Receivers and Managers Appointed) ("the Company")
ACN 090 717 310
Ferngrove Estate ("the Property")**

We advise that John L Greig and Neil R Cussen of Deloitte were appointed Receivers and Managers ("Receivers") of the Company on 15 June 2011 pursuant to provisions contained in both a registered fixed and floating debenture charge created by the Company in favour of Perpetual Nominees Limited.

Upon appointment as Receivers, they took control of the business and assets of the Company and engaged CapLand Real Estate Advisors Pty Limited ("CapLand") as their property advisors.

A letter was issued by the Receivers to Mr David Kelly of Ballina Shire Council (dated 18 July 2011) advising of the above and granted authorisation for CapLand to liaise with Ballina Shire Council on behalf of the Company.

We advise that representatives of the Receivers and CapLand met with both David Kelly and Bob Thornton (of Ballina Shire Council) on Friday 29 July 2011 and discussed the following matters in relation to the subject estate:

- On and off maintenance status for Stages 1 & 2
- Filling requirements for the balance land area (Stage 3 – 5)
- Link Road infrastructure works
- Titling of Stage 2 allotments
- Council Contributions
- Deferred payment contribution deed for Stages 1 & 2
- An outstanding amount for Private Works and;
- Any issues that Council may have in relation to the subject estate.

It was a good opportunity to meet with Council officers and explain the circumstances of a Receivership appointment as well as convey that our intentions are to proceed with selling the developed allotments within Stages 1 & 2 as there are parties interested in acquiring lots, with some of the lots under contract already.

We advise that at present, there are limited funds available to the Receivers, and as such, we would like to arrange a meeting with both yourself and Paul Tsikleas to discuss the subject estate and our request for the deferred payment of Council Contributions for the allotments within Stage 2 in consideration of the Receivers providing security to Council, similar to the Deed of Agreement Acknowledging Debt and Guarantee that was executed by Rayshield Pty Limited and Ballina Shire Council, dated 23 October 2009.

At present, Stage 2 allotments have been fully developed, however, titles have not been issued, and therefore, in order for the Receivers to successfully sell down these developed lots we emphasise the need for Council's support by way of deferring payment of Council Contributions until settlement of these allotments. We believe that we can provide similar security to what has been previously provided under the current Deed (dated 23 October 2009) and effectively a continuation of this agreement with a new party we do not believe would place the Council in any worse position.

We look forward to meeting with you in person to discuss this matter in detail. Please do not hesitate to contact me should you have any queries and advise when would be most convenient to meet.

Yours faithfully



Damian Winterburn
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Deferral of Developer Contributions

Policy No:	D10
Adopted:	26 November 2009 - Resolution No 261109/15

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OBJECTIVE

The objective of this policy is to provide clear guidelines as to how and when Council will consider the deferral of the payment of developer contributions for developments that have planning approval.

BACKGROUND

The payment of development contributions to Council and other government bodies is an essential component of financing the infrastructure associated with development across a local government area.

Development contributions can represent a significant financial component of a development and there may be times that it is in both the public and the developer's interest to defer the payment of those contributions to ensure the viability of a project.

However, deferrals effectively represent Council providing financing assistance to a project and therefore should only be used sparingly as there are numerous private financial instrumentalities (i.e. banks) available to provide that assistance.

DEFINITIONS

Developer Contributions - Refers to contributions payable to Council under Section 94 of the Environmental Planning and Assessment Act (1979) and Section 64 of the Local Government Act (1993).

SCOPE OF POLICY

This Policy applies to:

- Council employees
- Councillors
- Property owners

RELATED DOCUMENTATION

As a minimum this Policy should be read in conjunction with:

- Council's Code of Conduct

Relevant Legislation:

- Local Government Act 1993
- Local Government (General) Regulation 2005
- Environmental Protection and Assessment Act 1979

POLICY

As a general rule Council will not provide approvals for the deferral of developer contributions as the payment of these contributions are an integral component of the financing risk of any development project.

However Council also recognises that there may be exceptional circumstances where deferral could be warranted and in those circumstances the General Manager may submit a report to Council to allow consideration of any deferral proposal.

Any proposal must be submitted to Council in writing by the developer outlining why deferral is justified.

POLICY CONSIDERATIONS

Council may consider the deferral of developer contributions where a majority of the following factors are in existence:

- There has been a significant economic downturn during the period in which approvals for the development have been sought, thereby significantly increasing the risk profile of the project
- The planning assessment and approval of the project has resulted in the attachment of conditions that, in the opinion of Council, impact significantly on the financial viability of the project and the likelihood of those conditions being known prior to the assessment is considered extremely low
- The development is considered to be of a significant size (i.e. greater than 50 lots) to warrant the consumption of resources to consider such a deferral
- There are major public infrastructure benefits to be gained from the development (i.e. sporting fields, major road improvements et)
- The development is consistent with Council's long term planning strategies
- The deferral of receipt of the developer contributions will not impact on the works schedule associated with those developer contribution plans.

MINIMUM AGREEMENT CONDITIONS

The minimum conditions to be included in any agreement for deferral are:

- If Council grants such a request it is conditional upon the applicant providing a suitable Bank Guarantee and Deed of Agreement.
- A period for deferral of a contribution will be agreed between the applicant and Council prior to preparation of the Bank Guarantee. The maximum period for deferral is to be 12 months from the execution of any linen plan relevant to the development contributions.

- The Bank Guarantee will be required to be valid for at least twelve months after the end of the agreed period. The period may be extended in circumstances acceptable to Council.
- Interest will be charged on deferred contributions equal to the Local Government 7-year interest rate as published in the Financial Review each week.
- The amount of the Bank Guarantee will be calculated in the following manner:
$$G = C(1+i)^P$$
, where:
G is the amount of the Bank Guarantee
C is the contribution owing at the time the contribution is due;
I is the estimated compound interest rate set by Council; and
P is the period covered by the guarantee.
- The guarantee will be terminated when the payment of cash meets the liability.
- The Deed of Agreement is to be prepared by Council's solicitors at full cost to the applicant.
- The Bank Guarantee will be redeemed by Council should contributions not be paid by the due date.

AUTHORITY

Decisions for deferral of developer contributions are to be determined by the elected Council.

REVIEW

This policy is to be reviewed every four years.