

POLICY NAME: DEFERRAL OF DEVELOPER CONTRIBUTIONS
POLICY REF: D10
MEETING ADOPTED: 26 November 2009
Resolution No. 291109/15
POLICY HISTORY:



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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.

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- 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.