

PLANNING AND ENVIRONMENT COMMITTEE 7 JUNE 2023	2
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GENERAL POLICY DEFERRED PAYMENT OF LEVIED CHARGES - RENEWAL

Hamish McIntosh | 57/8/15 | #7195465

RECOMMENDATION:

- That Council renews the General Policy for the Deferred Payment of Levied Charges for a further four (4) years.**

INTERESTED PARTIES:

Not Applicable.

Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

EXECUTIVE SUMMARY:

Council's current General Policy for Deferred Payment of Levied Charges (the **General Policy**) is subject to a review period of twelve (12) months. Council officers completed a review of the General Policy in May 2023 confirming the General Policy is performing as expected.

The General Policy details the circumstances when Council, at its discretion, may agree to the payment of levied charges at a later date than required by the *Planning Act 2016* (the **Act**). The General Policy has been largely complied with by Developer's to date and continues to provide an incentive in the form of a cash-flow buffer at plan sealing stage for example.

It is recommended that the General Policy be renewed for further revision in four (4) years time.

BACKGROUND:

Deferred Payment of Levied Charges

Council levies Infrastructure Charges (Levied Charges) for new development under the Act. Levied Charges are usually payable prior to or on the Statutory Payment Date.

Development Type	Statutory Payment Date*
Material Change of Use	When the change happens
Reconfiguring a Lot	When the local government that levied the charge approves a plan for the reconfiguration that, under the Land Title Act, is required to be given to the local government for approval

Building work	When the final inspection certificate for the building work, or the certificate of occupancy for the building, is given under the Building Act
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* *Planning Act 2016* (Qld), s122(1)(a)-(d).

The Act allows the recipient of an infrastructure charges notice to request alternative arrangements for the payment of Levied Charges. If agreed to, the deferred payment arrangements must be formalised under an IA (the Act, s123).

Current General Policy

At Council's Planning and Environment Committee Meeting held on 4 May 2022 the following resolution was passed:

That Council adopts the General Policy for the Deferred Payment of Levied Charges based on the draft provided within Attachment 1, for commencement on 30 May 2022.

The General Policy has a review date which falls on 31 May 2023. Renewal of the General Policy will require a formal resolution by Council.

Since adoption Council has processed five (5) requests for Deferred Payment of Levied Charges under the General Policy. This equates to **\$5,425,303.13** of deferred infrastructure charges at present.

There is one Developer presently in default with **\$1,225,980.00** outstanding. This outstanding amount is fully recoverable under the Infrastructure Agreement and Local Government Act.

The General Policy has been largely complied with by Developer's to date and continues to provide an incentive to Developers in the form of cash-flow at plan sealing stage.

COMMENT:

In reviewing the General Policy, Council officers have considered the following:

- *Developer compliance with the General Policy* – Developers, excepting the project in default, have complied with the application and agreement process.
- *Risk of non-payment* – the risk of non-payment is managed under the Infrastructure Agreement (IA) and the Administrative Instruction which requires Council to notify Developer's prior to the revised payment date.
- *Financial implications* – the General Policy does not waive or reduce charges and the delayed payment of levied charges has a negligible impact on Council's budget and financial processes. Council officer's will continue to monitor the accumulation of deferred levied charges.
- *Administrative workability and resources* – the administration of the General Policy has been tailored to be efficient and there are no issues with resourcing administration of the General Policy.

OPTIONS:**Option 1: (Recommended)**

That Council renews the General Policy for the Deferred Payment of Levied Charges for a further four (4) years.

Or

Option 2:

That Council rescinds the General Policy for the Deferred Payment of Levied Charges.

CONSIDERATIONS:**Risk Management:**

Council's General Policy for Deferred Payment of Levied Charges along with its Administrative Instructions and Infrastructure Agreement template terms effectively manage the risk associated with the General Policy.

Council Finance and the Local Economy:

The General Policy has been reviewed by Council's Finance Department and PGS will continue to engage with Finance in order to monitor the cumulative impacts of deferrals on revenue streams.

The General Policy facilitates the development of land within the Cairns Region which contributes to the local economy.

Community and Cultural Heritage:

The General Policy will assist in the delivery of the availability of housing within the local government area.

Natural Environment:

Not Applicable.

Corporate and Operational Plans:

The recommendation supports the Strategic Objectives of the Economy, Liveability, and Serving the Community Strategic Goals contained in Council's Corporate Plan 2017 to 2022.

Statutory:

The infrastructure planning and charging framework for Queensland is prescribed under the *Planning Act 2016* and the associated Planning Regulation 2017.

The ability for Council and the Developer to enter into an Infrastructure Agreements and the associated legislative requirements are provided for under the Planning Act.

Policy:

No changes are recommended to the current General Policy.

CONSULTATION:

Council's Executive Leadership Team (ELT) has been briefed on the renewal of the General Policy and endorsed the recommendation in this report.

ATTACHMENTS:

Attachment 1 General Policy for the Deferred Payment of Levied Charges

A handwritten signature in black ink, appearing to read 'ES', with a long horizontal flourish extending to the right.

Ed Johnson
Director, Planning, Growth and Sustainability

Attachment 1 General Policy for the Deferred Payment of Levied Charges

CAIRNS REGIONAL COUNCIL



General Policy

DEFERRED PAYMENT OF LEVIED CHARGES

Intent	To establish the circumstances where Council may accept a limited extension of time for the payment of levied charges and the conditions which apply to such deferment.
Scope	This policy details the circumstances when Council, at its discretion, may agree to the payment of levied charges at a later date than those otherwise established in section 122 of the <i>Planning Act 2016</i> (Qld) ('the Act').

PROVISIONS

BACKGROUND

Council levies infrastructure charges by issuing infrastructure charges notices under the Act for development. The timing for the payment triggers for infrastructure charges are set out under section 122 of the Act (the **Statutory Payment Date**).

The recipient of an infrastructure charges notice, and the Council may agree whether the levied charge may be paid other than as required under section 122 of the Act. Section 150 of the Act provides that an Infrastructure Agreement (IA) give effect to matters stated in section 123 of the Act. An IA can set out the terms for deferred payment of infrastructure charges.

The recipient of an infrastructure charges notice may approach Council to enter into an infrastructure agreement for the deferred payment of levied charges. Council is not obliged to enter into an IA and is entitled to protect its legal and financial position. Council will only enter into an IA where the legal and financial risks are appropriately mitigated through:

- For Applicants meeting the conditions for deferred payment of levied charges and requests to defer payment of levied charges for up to 60 business days – enforceable terms of an IA that protect Council's and the community's interests.
- For Applicants meeting the conditions for deferred payment of levied charges and exceeding 60 business days but no longer than 250 business days – enforceable terms of an IA that protect Council's and the community's interests and the provision of appropriate 'security'.

DEFINITIONS

The terms used in this policy are extracted from the Act. Their meaning is therefore derived from the Act.

CONDITIONS FOR DEFERRED PAYMENT OF LEVIED CHARGES

1. For proposals to defer payment of levied charges for up to 60 business days from the Statutory Payment Date.

Council will only consider the deferred payment of levied charges where all of the following criteria are established:

- a) A development approval has taken effect;
- b) An infrastructure charges notice has been given for the development approval;
- c) The Applicant meets the following eligibility criteria:

- i. the Applicant must submit evidence of the individual's or entity's credit worthiness including disclosure of information that a reasonable person or entity has that may prevent the individual or entity from meeting the financial obligations under the IA.

(Note: Council may take reasonable steps to verify the consumer's financial situation).

- d) An Application for Deferred Payment of Levied Charges is made in the Approved Form and made at least 60 business days prior to the Statutory Payment Date;
 - e) The deferred payment date by which the levied charge will be payable is no longer than 60 business days from the Statutory Payment Date; and
 - f) On application and thereafter, the Applicant and Landowner agree to the terms of the Council's Infrastructure Agreement for Deferred Payment of Levied Charges (template).
 - g) The Applicant / Developer acknowledges that, until the Levied Charges are paid to Council, the Council may, pursuant to section 105(1) of the LG Reg, include the amount of the Levied Charges on any Rate Notice for the Land as an amount payable to Council; and
 - h) The Applicant and/or the Owner of the land the subject of the development approval, are willing to enter into an IA reflecting the Council's agreement to apply this policy and defer the payment of the levied infrastructure charges.
2. For proposals to defer payment of levied charges for a period exceeding 60 business days and not longer than 250 business days from the Statutory Payment Date.

Council will only consider the deferred payment of levied charges where all of the following criteria are established:

- a) A development approval has taken effect;
- b) An infrastructure charges notice has been given for the development approval;
- c) The Applicant meets the following eligibility criteria:
 - i. the applicant must submit evidence of the individual's or entity's credit worthiness including disclosure of information that a reasonable person or entity has that may prevent the individual or entity from meeting the financial obligations under the IA.

(Note: Council may take reasonable steps to verify the consumer's financial situation).

- d) An Application for Deferred Payment of Levied Charges is made in the Approved Form and made at least 60 business days prior to the Statutory Payment Date;
 - e) The deferred payment date by which the levied charge will be payable more than 60 business days but no longer than 250 business days from the Statutory Payment Date;
 - f) On application and thereafter, the applicant and landowner agree to the terms of the Council's Infrastructure Agreement for Deferred Payment of Levied Charges (template); and
 - g) The Applicant has provided Council with appropriate 'security' in the form of an irrevocable and unconditional bank guarantee or insurance bond:
 - i. upon which Council will be entitled to rely upon in order to cover the levied charge; and
 - ii. to at least the amount of the levied charge (in accordance with the automatic increase provision of the Act, where applicable).
 - h) The Applicant / Developer acknowledges that, until the Levied Charges are paid to Council, the Council may, pursuant to section 105(1) of the LG Reg, include the amount of the Levied Charges on any Rate Notice for the Land as an amount payable to Council; and
 - i) The Applicant and/or the Owner of the land the subject of the development approval, are willing to enter into an IA reflecting the Council's agreement to apply this policy and defer the payment of the levied infrastructure charges.
3. For proposals to defer payment of levied charges that do not meet the conditions for deferred payment of levied charges, the matter may be eligible for consideration by the full Council on a case by case basis.

DECISION MAKING PROCESS

1. Requests for deferred payment of levied charges must be made at least 60 business days prior to the Statutory Payment Date.
2. The Council may request additional information at any time to assist in the decision-making process.
3. Requests for the deferred payment of levied charges will be decided within 30 business days of the request being made and extended as appropriate to align with internal and Council's published meeting dates.

Note: The decision-making process for agreements to defer the payment of levied charges will be in accordance with the delegations and formal processes applicable at the time the request is made.

This policy is to remain in force until otherwise determined by Council.

Director responsible for Review:

Director - Planning, Growth and Sustainability

ORIGINALLY ADOPTED:

CURRENT ADOPTION: 7 June 2023

DUE FOR REVISION: 7 June 2027

REVOKED/SUPERSEDED: N/A

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{Mica Martin}
CHIEF EXECUTIVE OFFICER