

ORDINARY MEETING	17
22 NOVEMBER 2023	

**INFRASTRUCTURE AGREEMENT FOR THE DEFERRED PAYMENT OF LEVIED CHARGES FOR ROCKY CREEK STAGE 2 (2 LOTS INTO 35 RESIDENTIAL LOTS, NEW ROAD, PARK, AND BALANCE LAND) AND STAGE 2B (1 LOT INTO 8 LOTS) AND DEED OF VARIATION OF AGREEMENT TO AMEND INFRASTRUCTURE AGREEMENT FOR TRUNK WATER SUPPLY, WASTEWATER AND TRANSPORT INFRASTRUCTURE FOR ROCKY CREEK STAGE 1 (1 LOT INTO 48 LOTS, NEW ROAD, PARK, AND BALANCE LAND)**

8/13/2307, 8/13/2357 & 8/13/2495 | #7300135

**RECOMMENDATION:**

That Council:

1. Enters into an Infrastructure Agreement with Kroymans Developments Pty Ltd for the Deferred Payment of Levied Charges for Stages 2 and 2b of the Rocky Creek residential estate;
2. Enters into a Deed of Variation of Agreement with Kroymans Developments Pty Ltd to give effect to amendments to the Infrastructure Agreement of 13 October 2023 relating to trunk water supply, wastewater and transport infrastructure; and
3. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to enter into contracts, negotiate, finalise and execute any and all matters associated with the above Infrastructure Agreement and Deed of Variation of Agreement with Kroymans Developments Pty Ltd, including any and all consequential or minor amendments as agreed by the parties.

**INTERESTED PARTIES:**

Kroymans Developments Pty Ltd  
 Stantec (Cairns)  
 Aspire Town Planning and Project Services  
 Wilson Ryan Grose (Townsville)

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

## **EXECUTIVE SUMMARY:**

Kroymans Developments Pty Ltd (the **Developer**) and Council continue to actively progress matters relating to the redevelopment of land at 900L Cooper Road, 900L Wilderness Way, and 101R-103R Cooper Road, Mount Peter, formally described as Lot 900 on SP322693 and SP322661 to advance the delivery of the Rocky Creek Precinct - part of the endorsed Pinecrest Master Planned Community Structure Plan.

Council is in receipt of two (2) requests from the Developer to:

1. Defer the payment of Levied Charges (the **Deferral Request**) for the following Development Permits over land located at 900L Cooper Road, 900L Wilderness Way and 101R-103R Cooper Road, Mount Peter:
  - a. Rocky Creek Stage 2 for Reconfiguring a Lot (2 Lots into 35 Residential Lots, New Road, Park, and Balance Land) – Council Reference 8/13/2357; and
  - b. Rocky Creek Stage 2b for Reconfiguring a Lot (1 Lot into 8 Lots) – Council Reference 8/13/2495; and
2. Vary the recently executed Infrastructure Agreement of 13 October 2023 (the **Variation Request**) relating to trunk water supply, wastewater and transport infrastructure under a deed of variation of agreement. The variation seeks to sanction a change to the timing particulars of when work and land infrastructure contributions are required to be provided.

In respect of the Deferral Request, Officers note that the request relates to Stages 2 and 2b of the Rocky Creek Precinct which incorporate a combined total of 43 residential allotments, with the delivery to be staged accordingly.

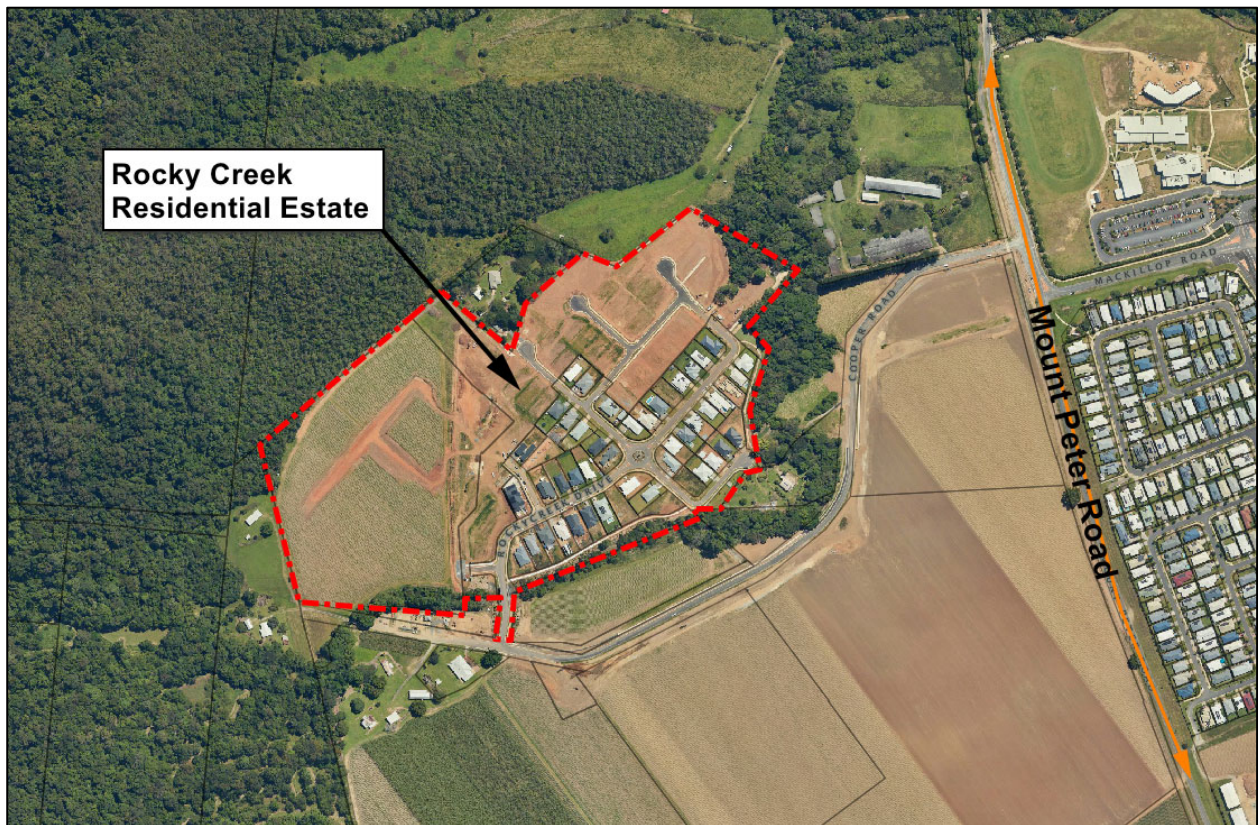
In respect of the Variation Request, Officers do not have any significant concerns about the variation to the timing of the provision of the land contribution associated with trunk Transport infrastructure. There are consequential amendments required to give effect to the separating of the timing for the provision of the infrastructure, in particular, when any request for a recalculation of Levied Charges can be made, however this is able to be effectively managed through the provisions of the deed.

On the above basis, it is considered appropriate that Council resolve to enter into an IA for the Deferral Request and enter into a Deed of Variation of Agreement for the Variation Request. In order to ensure continuity in expeditiously finalising this matter, it is further recommended that Council resolve to delegate the final negotiations and execution of the Deferral Request IA and the Variation Request Deed to the Chief Executive Officer.

## BACKGROUND:

### Subject Land and Surrounding Development

The subject land under development is located at 300L Cooper Road, Mount Peter and is currently described as Lot 300 on SP315904 (see **Figure 1**). Under the CairnsPlan 2016, the subject land is located within the Low-Medium Density Residential Zone and Precinct 2 – Cooper Road in the Mount Peter Local Plan.



**Figure 1: Locality Plan**

### Development Approvals

Kroymans Developments Pty Ltd (the **Developer**) has the benefit of several Development Approvals, including three (3) separate Development Permits for Reconfiguring a Lot and a Preliminary Approval for a Structure Plan, to facilitate the establishment of the Rocky Creek residential estate, being a part of the wider Pinecrest Master Planned Community.

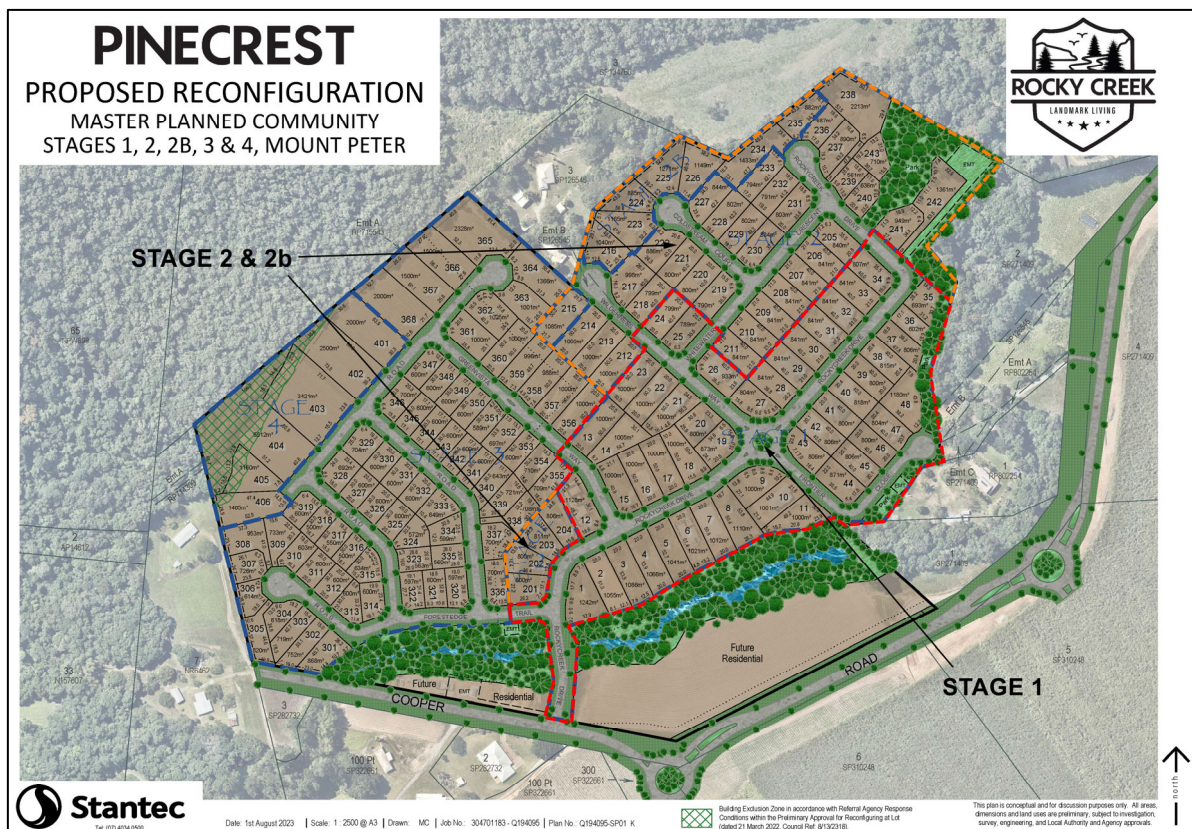
On 14 October 2020, at its Planning and Environment Committee Meeting, Council approved a development application for Stage 1 of Rocky Creek to reconfigure the subject land into 46 residential lots. This approval was subsequently amended by Negotiated Decision Notice on 12 January 2021 and further amended by an Amended Decision Notice dated 3 August 2021. The 3 August 2021 Amended Decision Notice was as a result of a partially successful conversion application to convert non-trunk infrastructure to trunk infrastructure, which was determined by Council at its Planning and Economic Committee Meeting held on 9 June 2021.



On 21 May 2021 under instrument of delegation, Council approved a development application for Stage 2 of Rocky Creek, to reconfigure the land to achieve an additional 34 residential lots. The Applicant submitted Change Representations in respect of the Decision Notice on 26 May 2021. At the Ordinary Meeting of 10 November 2021, Council resolved to approve the Change Representations and issue a Negotiated Decision Notice for Stage 2 (dated 16 November 2021). Following the issue of the Negotiated Decision Notice, 2 separate Minor Change applications have been submitted and approved; the first in September 2022 and the second in June 2023. The current Changed Decision Notice for Stage 2 is dated 23 June 2023.

On 17 November 2022 under instrument of delegation, Council approved a development application for Stage 2b of Rocky Creek, to reconfigure the land to achieve an additional 8 residential lots. The Applicant submitted Change Representations in respect of the Decision Notice on 28 November 2022. Under instrument of delegation, Council approved the Change Representations and issued a Negotiated Decision Notice for Stage 2b on 23 December 2022. Following the issue of the Negotiated Decision Notice, the Applicant lodged a Minor Change application in February 2023 and request for a Generally in Accordance determination in October 2023. The current Changed Decision Notice for Stage 2b is dated 13 March 2023.

Stages 1, 2 and 2b of the Rocky Creek estate are shown in Figure 2 below.



**Figure 2: Stage 1 (Lots 1 to 44), Stage 2 (Lots 2 to 35) & Stage 2b (Lots 1 to 7)**

## DEFERRAL REQUEST

The Deferral Requests were received on 16 October 2023 (Council reference: #7287611 and #7287606), where the Developer seeks to defer the levied charges, under an Infrastructure Agreement (IA), for a period of up to sixty (60) business days from the date an application for Approval of the Plan of Subdivision for the development is endorsed by Council.

The request relates to Stages 2 and 2b of the Rocky Creek Precinct which includes a combined total of 43 residential allotments, with the delivery to be staged accordingly. To confirm, the deferral for each stage would be brought into effect when Council endorses a Plan of Subdivision for each respective stage of the development, which will be submitted and managed individually.

To ensure all risk is appropriately managed, the requests to defer under the proposed Infrastructure Agreement will:

1. Only be considered under the provisions of the infrastructure where the *Deferred Payment of Levied Charges General Policy* remains current, and in effect;
2. Manage the levying and payment of charges; and
3. Incorporate mechanisms to levy interest in accordance with the *Local Government Regulation 2012* (Qld) (the **LG Reg**) should a default event occur.

The current infrastructure charges levied against the land are:

DA	Council Reference	Infrastructure Charges Resolution	Levied Date	Indexed Date	Levied Amount
8/13/2357 (Stage 2)	#7215959	Cairns Regional Council Charges Resolution No.1 of 2021	23/06/2023	31/03/2023 (PPI: 126.56)	\$1,099,144.45
8/13/2495 (Stage 2b)	#7079594	Cairns Regional Council Charges Resolution No.2 of 2021	18/11/2022	30/09/2022 (PPI: 123.42)	\$252,216.01
<b>TOTAL:</b>					<b>\$1,351,360.46</b>

**Table 1: Infrastructure Charges Levied for Stages 2 & 2b.**

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.

The Developer's request meets the conditions for deferred payment of levied charges as set out in Council's *General Policy for Deferred Payment of Levied Charges*, including:

- The Developer has demonstrated credit worthiness;

- The deferred payment date by which the levied charge will be payable no longer than 60 business days from the Statutory Payment Date for each stage of the development or settlement of sale of the first lot within Stages 2 or 2b, whichever occurs first; and
- The Developer has agreed to the terms of Council's Template IA for Deferred Payment of Levied Charges.

It is noted that, as the IA applies to both Stages 2 and 2b, upon settlement of sale of the first lot within either Stage (and should this happen within the sixty business days) the levied charge for both Stages 2 and 2b will become payable.

#### Council's General Policy – Deferred Payment of Levied Charges

Council's *General Policy – Deferred Payment of Levied Charges* (the **General Policy**) was adopted on 30 May 2022. This Policy is currently planned to be revised on 7 June 2027.

The General Policy includes the following conditions for proposals to defer payment of levied charges for a period of up to sixty (60) business days from the Statutory Payment Date:

- 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.*

### Template Infrastructure Agreement

Template IA's have been prepared to support the implementation of the General Policy. The template IA's were intentionally drafted to protect Council and the future purchasers from the legal and financial risks associated with deferred payment of levied charges.

The terms of the Council's IA templates for short-term and longer-term deferrals have been designed to protect Council. Relevantly, the IA terms:

1. Prohibit the developer lodging any further plans of subdivision, or selling or transferring any further parts of the Land if the IA terms are breached;
2. Allows Council to include the deferred amount on rates notices, consistent with section 105(1) of the *LG Reg*;
3. Make the Developer personally liable for breaching the IA;
4. Makes each Landowner jointly and severally liable to repay the Levied Charges;
5. Restricts the right to sell the land (subject to the IA) requiring the consent of the proposed transferee that the IA attaches to the land and consent from Council to the proposed transferee becoming subject to the Landowner's obligations; and
6. Include a requirement to notify future purchasers of 'developed lots' of the circumstances and legal effect of the IA - i.e., if the Developer does not pay the infrastructure charges, owners of the Land will each be jointly and severally liable to Council for the payment of all outstanding infrastructure charges.

### Compliance with the General Policy

The intent of the General Policy is to ensure that the legal and financial risks are appropriately mitigated enforceable terms of an IA that protect Council's and the community's interests. Here, compliance with the General Policy and agreement to Council's template IA terms for deferred payment is paramount.

The Developer's request meets the conditions for deferred payment of levied charges as set out in Council's *General Policy for Deferred Payment of Levied Charges*, including:

- The Developer has demonstrated credit worthiness;

- The deferred payment date by which the levied charge will be payable no longer than 60 business days from the Statutory Payment Date; and
- The Developer has agreed to the terms of Council's Template IA for Deferred Payment of Levied Charges.

### Special Considerations for this Infrastructure Agreement

This IA is structured to defer the payment date of two (2) stages of the Rocky Creek Precinct of the broader Pinecrest Master Planned Community upon endorsement of the Plan of Subdivision, which are to be submitted and managed individually.

Further, the staging mechanisms of the IA will also accommodate the sub-staging arrangements that were recently approved by Council.

These arrangements will be tracked on a register and managed in conjunction with the other IA administering for the land / Developer, where relevant.

As outlined above, the Policy is set to be revised on 7 June 2027. Accordingly, the terms of the proposed IA includes reference to the current policy period, where the Applicant / Developer will be unable to defer any levied charges where:

- a) Council's endorsement of the Plan of Subdivision is on 7 June 2027 or later; or
- b) Council's endorsement of the Plan of Subdivision is before 7 June 2027 and the deferral period extends past the 7 June 2027.

This ensures all survey plan endorsement applications and their respective deferral period/s fall within the current Policy Period.

In addition to the above, additional Terms have been included in the draft IA to allow Council the discretion to charge interest at rates calculated in accordance with the LG Reg. The purpose of these terms is to motivate the Developer to comply with requirements of this IA and the GP more broadly; as well as offer additional avenues to ensure the prompt payment of all levied charges and avoid placing any burden on future land holders.

### **VARIATION REQUEST**

At the Ordinary Meeting of 4 October 2023, Council resolved to enter into an Infrastructure Agreement (IA) with Kroymans Developments Pty Ltd for the provision of particular trunk water supply, wastewater and transport infrastructure associated with the development of the 'Rocky Creek' residential estate at Mount Peter.



At the 4 October 2023 meeting, Council further resolved to *delegate authority to the Chief Executive Officer, in accordance with the Local Government Act 2009 to enter into contracts, negotiate, finalise and execute any and all matters associated with the Infrastructure Agreement*. The IA was executed and commenced on 13 October 2023. As the IA provided certainty for both parties as to how and when particular trunk infrastructure would be provided, Officers had a sanguine expectation that with the execution of the IA, the outstanding matters associated with Stage 1 of the development would be finalised promptly.

Shortly after the fully executed IA was provided to the solicitors acting for the Developer, Council received a request to '*process the refund amount excluding the land dedication amounts effective today*' (correspondence of 20 October 2023). The fully executed IA mentions specific timing clauses for when such a request can be made. In responding to the request, Officers duly advised the Developers representatives that the requirements of the relevant clauses in the IA for such a request to be properly made had yet to be met; Officers therefore declined to accept the request as being a proper request consistent with the IA.

As a result of this advice, Council received a request from the Developer to vary the terms of the 13 October 2023 IA to allow for the separation of the timing for when particular trunk infrastructure is to be provided. The Developer specifically seeks to separate the provision of the water supply and wastewater infrastructure from the provision of the transport infrastructure.

A draft deed of variation of agreement is being prepared to reflect the following:

- Separate distinct timing provisions associated with the provision of the transport (land) contribution with the provision of the water supply and wastewater (works) contributions; and
- Amendment to the timing clauses for claiming an offset or refund against Levied Charges for the development. The proposed amendments reflect the intent to separate the timing of when infrastructure is provided and consequentially, when the developer may claim an offset or refund for the separate infrastructure elements.

At the time of preparation of this report, Council's legal representatives had written to the representatives for the Developer in relation to the format of the proposed Deed, however a response to Council's proposed provisions had not yet been received.

It is important to observe that there are no changes to the agreed establishment cost of the relevant infrastructure as reflected in the executed IA, only the timing at which it is provided.

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

That Council:

1. Enters into an Infrastructure Agreement with Kroymans Developments Pty Ltd for the Deferred Payment of Levied Charges for Stages 2 and 2b of the Rocky Creek residential estate;
2. Enters into a Deed of Variation of Agreement with Kroymans Developments Pty Ltd to give effect to amendments to the Infrastructure Agreement of 13 October 2023 relating to trunk water supply, wastewater and transport infrastructure; and
3. Delegates authority to the Chief Executive Officer in accordance with the *Local Government Act 2009* to enter into contracts, negotiate, finalise and execute any and all matters associated with the above Infrastructure Agreement and Deed of Variation of Agreement with Kroymans Developments Pty Ltd, including any and all consequential or minor amendments as agreed by the parties.

**Option 2 :**

That Council:

1. Declines to enter into an Infrastructure Agreement with Kroymans Developments Pty Ltd for the Deferred Payment of Levied Charges for Stages 2 and 2b of the Rocky Creek residential estate;
2. Declines to enter into a Deed of Variation of Agreement with Kroymans Developments Pty Ltd in respect of the Infrastructure Agreement of 13 October 2023 dealing with trunk water supply, wastewater and transport infrastructure; and
3. Advises Kroymans Developments Pty Ltd of the resolution.

**CONSIDERATIONS:****Risk Management:**

The legal and financial risks to Council are mitigated and managed by compliance with the General Policy and subsequent administration and enforcement of the terms of the IA and Deed of Variation of Agreement.

**Council Finance and the Local Economy:**

The decision will not adversely impact on Council finance and facilitates the development of land within the Cairns Region which contributes to the local economy.

Community and Cultural Heritage:

The decision 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 and facilitation of the development through the Deferral Request and the Variation Request supports:

1. Focus One – Robust Economy – by facilitating population growth and housing affordability;
2. Focus Five - Focused Council – by ensuring decision making is collaborative, transparent and accountable.

Statutory:

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

Policy:

The recommendation for the Deferral Request is generally consistent with the relevant provisions of the General Policy for the reasons outlined above however the risks are mitigated through controls within the proposed IA itself.

**CONSULTATION:**

Council's Finance Department has been consulted in accordance with the Administrative Instruction for the Administration of the General Policy. Finance has recommended that a resolution of Council is required to support the Deferral Request given the level of risk identified through progress towards completion of current works and contraventions with provisions of other IAs.



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