
Payment of Development Contributions and Section 64 Headworks Charges by Deferment or Instalments (under special circumstances)

Policy Number: POL18/54 • **Adopted:** 30/01/2007 • **Amended:** 9/06/2009, 19/04/2011, 29/05/2012 • **Reaffirmed:** 26/02/2013, 9/05/2017 • **Minute Number:** MIN07.61, MIN09.719, MIN11.313, MIN12.596, MIN13.106, MIN17.378 • **File:** 1057E • **Produced By:** Planning, Environment & Development Group • **Review Date:** 1/12/2020

1. PURPOSE

To enable the payment of development contributions and Section 64 (*Local Government Act 1993*) headworks charges by deferment or instalments.

2. STATEMENT

Upon consideration of special circumstances, Council permits the payment of development contributions by deferment for a maximum of two years to all applicants and payment by instalments (periodic payment) over five years for tenants or businesses operating in the Shoalhaven Local Government Area. Where the request relates to residential subdivisions, Council allows deferring payment of development contributions and Section 64 headworks charges until the settlement of sale of the subdivided lots.

In circumstances where Council is to consider the waiving or long-term (i.e. greater than 5 years) deferred payment of development contributions, this arrangement should be detailed and finalised in a Voluntary Planning Agreement.

3. PROVISIONS

Requests for payment of contributions by deferment for 2 years or instalments are by written application to Council. The application is to include the reasons why special circumstances apply and will be determined at Council's discretion. Special circumstances will relate to the financial circumstances of the applicant, the amount of the contribution, the works that the contribution is applied to and its location and for tenants, the nature and duration of the tenancy.

For residential subdivisions, special circumstances relate to the difficulty in financing projects and do not need to be demonstrated in an application.

Payment of contributions by deferment or instalments will not be considered when the works projects to which the contributions apply, relate to public safety or health, or the amount of contributions is less than \$5,000.

3.1. Deferment for 2 Years or Payment by Instalments

Payments will be subject to an interest charge equivalent to that applied to overdue rates and an administration charge equivalent to the bank guarantee lodgement fee for subdivision related matters, as shown in Council's Fees & Charges.

The full amount of contributions plus interest is to be secured by bank guarantee, to be accepted by Council before release of plans or construction certificate.

If Council agrees to accept deferred payment for 2 years or payment by instalments, Council will require the applicant to provide a bank guarantee with the following conditions:

- the bank guarantee be by a bank equal to the value of the contribution payable or the amount of the outstanding contribution, plus interest;
- the bank unconditionally pays the guaranteed sum to the Council if the Council so demands in writing;
- the bank must pay the guaranteed sum without reference to the applicant or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of the development;
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required;
- where a bank guarantee has been deposited with Council, the guarantee shall not be cancelled until such time as the original contribution, accrued interest and other charges are paid.

The administration charge is to be paid at the time of lodgement of the bank guarantee.

3.2. Deferment for Residential Subdivisions

Note: This section does not apply to subdivisions where the construction of a dwelling is included in the development application.

In the case of subdivisions, Council will consider the deferment of payment of development contributions and Section 64 headworks charges, subject to the following:

- The owner of the land and, if relevant, any mortgagees of the property entering into, at no cost to Council, a Deed of Agreement.
- The agreement between the Council and applicant binding the applicants land with the obligation to repay the contributions.
- If the applicant's land is subject to a mortgage(s), Council entering into a priority agreement with the mortgagee(s) that gives Council priority for payment of contributions.
- Notice of the agreement and Council's rights being registered in the form of a caveat on the title of the land to be subdivided.

- The agreement making provision for payment of the deferred contribution **at the rate applicable at the time of payment** and detail a schedule for the timing of the payments upon sale of the subdivided lots.
- The caveat shall be in a form that acts as a bar to transfer of ownership of any lot within the subdivision unless Council has provided its agreement to remove the caveat.
- Council's agreement to removal of the caveat from a subdivided lot being provided upon receipt of payment of the deferred contributions in accordance with the terms of the Deed of Agreement.

Note: All costs involved in the above requirements are at the expense of the applicant.

4. IMPLEMENTATION

The policy applies to specific development and subdivision applications, and therefore implementation of this policy is the responsibility of Development & Environmental Services Group and Shoalhaven Water Group. The following implementation procedures will apply:

4.1. Deferment for 2 Years or Payment by Instalments

- Calculations for the amount of the Bank Guarantee plus interest and the deferment or instalment schedule are to be checked and signed off by Finance Section (refer to Financial Accountant) prior to entering an agreement with the developer.
- It is usual practice not to have an expiry date on the Bank Guarantee and it is to be unconditional. If an expiry date is included it must be at least 1 month after the due date for payment of the contribution. Under no circumstances should the Bank Guarantee have an expiry date on or before the due date.
- The Bank Guarantee for the correct amount (including interest) is to be received and confirmed as complying with Council's requirements prior to the release of linen plans or construction certificate (refer to Financial Accountant).
- The original Bank Guarantee is to be forwarded to Council's Finance Section (Financial Accountant) with an accompanying electronic memo which references the related SF or DA file so that it can be checked, registered as a legal document and placed in Council's safe.
- When all the amounts owing (including interest) have been paid, a memo is to be sent to the Financial Accountant requesting that the Bank Guarantee be released.
- If amounts owing (including interest) have not been paid by the due date, Development & Environmental Services Group should send a letter to the applicant warning that the Bank Guarantee will be called up if payment is not made by a specific date (within 1 week).
- If amounts owing (including interest) have still not been paid despite the warning letter, a memo is to be sent to the Financial Accountant requesting that the Bank Guarantee be called up. This must be done at least 2 weeks before any expiry date on the Bank Guarantee.
- Although Council has agreed to payment of development contributions by deferment or instalments, it is preferred that a Bank Guarantee for the full amount due (including interest) be held by Council until all the contributions plus interest due have been paid.

- It is not preferred that the Bank Guarantee amount be reduced progressively (for example, following part payment). Any reduction to the Bank Guarantee amount is to be requested via a memo to the Financial Accountant who will then contact the bank. It is usual practice for the bank to replace an existing Bank Guarantee with a new Bank Guarantee when the amount is reduced.

4.2. Deferment for Residential Subdivisions

- Development contributions and Section 64 headworks charges to be deferred are to be confirmed and signed off by the assessing officers prior to being detailed in the Deed of Agreement.
- Council's agreement to removal of the caveat from individual lots will be provided upon receipt of payment of the deferred contributions in accordance with the terms of the Deed of Agreement.

5. REVIEW

This policy will be reviewed within 12 months of election of a new Council.

6. APPLICATION OF ESD PRINCIPLES

None applicable.