

## **Economic Development Incentive for Residential Development Policy**

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<b>MINUTE NUMBER</b>	329/2020
<b>DATE APPROVED</b>	15 October 2020
<b>EFFECTIVE</b>	15 October 2020
<b>AUTHORITY</b>	General Manager
<b>CONTACT OFFICER</b>	Director Corporate Services

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## 1 PURPOSE

- 1.1 Council recognises the importance of new residential development within the Forbes Local Government Area (LGA) particularly within the township of Forbes. This policy seeks to encourage and promote development of marketable residential land within Forbes through the provision of financial assistance, by way of deferred payment arrangements.
- 1.2 This purpose of this policy is to establish guidance for the consideration of requests for financial assistance for works associated with the private development or subdivision of land, including water and sewer headworks and private works, for residential purposes in accordance with the *Local Government Act 1993* (the Act).
- 1.3 This policy also provides due diligence controls and mechanisms to protect Council's liability when providing financial assistance of this type. The application of the due diligence controls and mechanisms will be considered on an individual basis dependent on the nature and value of the request.

## 2 SCOPE

- 2.1 This policy applies to all requests to Council for financial assistance for works associated with the private development or subdivision of land, including water and sewer headworks and private works, for residential purposes.
- 2.2 All applications received under this policy must be presented to Council for decision in accordance with s. 356 of the Act.
- 2.3 Council cannot delegate authority to the General Manager or any other Council Officer to approve a request for financial assistance in accordance with s. 377(q) of the Act.
- 2.4 Compliance with this policy is the responsibility of the General Manager and Director of Corporate Services.

## 3 DEFINITIONS

- 3.1 For the purposes of this policy, the following definitions apply:

<b>Term</b>	<b>Definition</b>
<b>Act</b>	<i>Local Government Act 1993 (NSW)</i>
<b>Financial Assistance</b>	As provided by s. 356(1) of the Act, means "contribute money or otherwise grant financial assistance to persons". For purposes of this policy financial assistance takes the meaning of deferred payment of water and sewer headworks charges and private works.
<b>Private Works</b>	As provided by s. 67 of the Act refers to "any kind of work that may be lawfully carried out on the land". This is further expanded to works that lie outside of the responsibility of Council for which a quotation has been provided to the landowner by Council. Private works for the purposes of this policy excludes water and sewer headworks.

## 4 POLICY STATEMENT

### 4.1 Essential Eligibility Criteria

- 4.1.1 To be eligible under the terms of this policy the following criteria must be met for residential subdivision developments:
- i. development must take place within land where residential development is permitted;
  - ii. development must be granted consent under the in force Forbes Local Environmental Plan; and
  - iii. the existing reticulated water and sewer networks are available or have the ability to be extended.
- 4.1.2 Applicants must complete the application for residential development incentive and provide sufficient information for Council Officers to undertake a due diligence assessment prior to submission to Council. This assessment incorporates:
- i. Landowner assessment and credit worthiness; and
  - ii. Development assessment.
- 4.1.3 All applications for financial assistance must in accordance with this policy be reported to Council for consideration. Standard conditions as outlined in cl. 4.2.1 will be applied to all approved Residential Incentive Applications.
- 4.1.4 Council in accordance with the provisions of s. 67 (private works) and s. 356 (financial assistance) of the Act must undertake public notice of the proposed resolution of Council for 28 days prior to Council approving an application under this policy.
- 4.1.5 Upon resolution of Council approving financial assistance for residential development incentive, the landowner must return a signed Residential Development Incentive Agreement to Council within thirty (30) days.
- 4.1.6 Private works approved for financial assistance under this Policy shall comply with Council's *Private Works Policy*, excluding cl. 4.1 of the *Private Works Policy*.

### 4.2 Financial Assistance (Deferred Payment) Conditions:

#### 4.2.1 Standard Conditions

All approved applications must have the following conditions applied in a Residential Development Incentive Agreement:

- i. Sewer and water headworks charges and private works charges must be paid upon the earlier of:
  - a. the sale of the first block; or
  - b. Two (2) years from the date of registration of title.
- ii. The developer must advise Council of the sale of each block and remit the funds as part of the settlement process.
- iii. Any liabilities owing to Council at the expiry of the Residential Development Incentive Agreement must be paid within thirty (30) days.

- iv. All financial assistance, being deferred payments, made under this policy will be recorded on the parcel's s. 603 Certificate as a liability against the land.
- v. Private works, further to sewer and water headworks charges, as provided by cl. 3.1, will incur an additional market interest rate on the balance owing.
- vi. Fees payable will be those applicable in accordance with Council's *Schedule of Fees and Charges* at the time of payment and not the fees applicable as at the date of Development Consent.
- vii. Council must undertake a risk assessment on all requests for financial assistance received. Depending on the risk rating Council must apply one or more of the following four (4) forms of security:
  - a. Council will require the applicant to register a caveat against that land title noting Council's interest, to be withdrawn at the completion of the payment schedule.
  - b. A registered mortgage (preferably a first registered mortgage) over the subject land in favour of Council.
  - c. Council must be granted a general security over all assets owned by the landowner pursuant to the *Personal Property Securities Act 2009 (Cth)*.
  - d. Where the landowner(s) are corporate entities, personal guarantees must be provided by each Director of the landowning entity.
- viii. Private works, valued at \$50,000 or more, must have one of the securities defined in vii.(b-d) applied.
- ix. All costs associated with the application and withdrawal of security applied in accordance with cl. 4.2.1 vii a – d is the responsibility of the developer, including relevant solicitor fees.

#### 4.2.2 Default or Breach of Residential Development Incentive Agreement:

- i. Non-compliance with the conditions outlined in cl. 4.2.1 will render the Residential Development Incentive Agreement void. Council will notify the landowner immediately of the non-compliance resulting in the outstanding balance of the agreed deferred payment arrangement owing to Council requiring payment within 30 days.
- ii. Non-compliance with the conditions outlined in cl. 4.2.1vii will result in Council commencing proceedings to recoup its financial investment.

## 5 VARIATION

- 5.1 Council reserves the right to vary the terms and conditions of this policy subject to a report Council.

## Revision History

Version	Adoption Date	Authorised by	Approved by	Revision Date
V1	19/04/2007	General Manager	Council	19/04/2008
V2	21/02/2008	Director Corporate Services	Council	21/02/2010
V3	18/10/2018	Director Corporate Services	Council	18/10/2019
V4	12/12/2019	Director Corporate Services	Council	12/12/2021
V5	15/10/2020	Director Corporate Services	Council	15/10/2022

## Change History

Version	Change Details
V1	Initial Policy
V2	Amendment
V3	Amendment
V4	Amendment of Format to rebranding style, incorporation of the provisions for s. 356 and s. 67 of the Act, addition of due diligence assessment prior to consideration of Council and addition of securities to protect Council's liability exposure.
V5	Inclusion of cl. 4.1.6 to clarify private works undertaken in accordance with Private Works Policy; Amendment to cl. 4.2.1 to identify "private works" repayment timeframe; and Inclusion of cl. 4.2.1 ix to define financial responsibility relating to costs of applying and withdrawing securities to protect Council's liability exposure.

## Related Documents

### Title

*Local Government Act 1993*

*Local Government Amendment (Governance and Planning) Act 2016*

*Local Government (General) Regulation 2005*

*Personal Property Securities Act 2009 (Cth)*

Council's Operational Plan (Schedule of Fees and Charges)