

COUNCIL AGENDA ADDENDUM

ORDINARY COUNCIL MEETING

29 April 2020

ADDENDUM ITEMS

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City Economy and Growth Report

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EGROW 10	Timing of Section 7.11 & 7.12 Payments
Strategic Direction	Generating Opportunity Create an attractive environment for investment
File Ref	098127.2020
Report By	Shaun Beckley - Manager, Infrastructure Planning
Approved By	Tim Moore - Director, City Economy and Growth / Deputy CEO

EXECUTIVE SUMMARY

At the extraordinary Council meeting on 16 April 2020, Council resolved to:

1. *“Defer on application 50% of Sect 7.11 contributions payable from Construction Certificate stage to Occupation Certificate/Subdivision stage for all applications received or approved till December 2020”.*
2. *Fast track Sect 4.55 and/or 4.56 applications requesting 50% Sect 7.11 deferrals to Occupation/Subdivision stage for applications already approved but yet to be issued a Construction Certificate;*
3. *Commit to drive down the outstanding DA currently being determined and allow the use of external providers should this be required; and*
4. *Amend the Contributions Plan to remove the requirement of a bank guarantee (for the full amount of the contribution payable), adopt immediately if permissible, otherwise exhibit for statutory 28 days period.*

The purpose of this report is to formally implement items 1 and 4 of the resolution through amendment of six Contributions Plans by temporarily changing the timing of payment and suspending the existing requirement for a bank guarantee as a part of any deferral of payments.

In support of Item 1 of the resolution, the following provision will be included within the relevant “timing of payment” clause in each Contribution Plan:

Covid-19 Response

For Development Applications lodged or approved between 16 April 2020 and 31 December 2020 and for Section 4.55 modifications lodged in the same period which seek to modify the relevant contributions condition of a development consent for which any contributions have not yet been paid, 50% of the contribution can be paid prior to the issue of a construction certificate with the remaining 50% payable prior to the issue of the first occupation certificate. Any applications during this period that include subdivision must have all contributions paid prior to the issue of the Subdivision Certificate.

For such applications, Council will waive the requirement to have an unconditional bank guarantee in place for the duration of the deferral.

In support of Item 4 of the resolution, the following provision will be included within the relevant “deferred payments” clause in each Contribution Plan:

For Development Applications lodged or approved between 16 April 2020 and 31 December 2020 and for Section 4.55 modifications lodged in the same period which seek to modify the relevant contributions condition of a development consent for which any contributions have not yet been paid, a bank guarantee for the deferred amount is not required.

Points 2 and 3 of the above council resolution will be implemented at a procedural level during the development assessment process.

The draft Contributions Plans will be placed on exhibition in accordance with the requirements of the *Environmental Planning and Assessment Act, 1979* and *Environmental Planning and Assessment Regulation 2000*. It is noted that recent amendments to exhibition requirements due to Covid-19 mean that the process to exhibit will be much quicker. The Plans can be exhibited on Council’s website immediately following the meeting, rather than printed in a newspaper. The plan amendments must however be exhibited for 28-days.

To reduce the time to formalise these changes, it is recommended that Council delegate to the CEO the ability to finalise the Plans.

Prior to formalising these changes to the various Contributions Plans, the standard condition of consent for contributions will be updated to highlight deferred payment options. Legal advice is that anyone wishing to defer payment of contributions must be subject to the existing requirements for a bank guarantee, until such time as the proposed plan amendments are

adopted. Once adopted, payments will be able to be deferred, without a bank guarantee and without further modification to the wording of the condition.

RECOMMENDATION

That Council:

1. Exhibit concurrently the amendments included in this report to:
 - 1.1 *Liverpool Contributions Plan 2009,*
 - 1.2 *Liverpool Contributions Plan 2008 - Edmondson Park,*
 - 1.3 *Liverpool Contributions Plan 2014 - East Leppington 2014,*
 - 1.4 *Liverpool Contributions Plan 2014 - Austral and Leppington North,*
 - 1.5 *Liverpool Contributions Plan 2018 - Liverpool City Centre and*
 - 1.6 *Liverpool Contributions Plan 2018 - Established Areas*

in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and regulations;

2. Delegates to the CEO authority to adopt the amendments to the Contributions Plans; and
3. Endorse the interim approach to conditioning development approvals prior to formalising the amendment to the Contributions Plans.

REPORT

At the extraordinary Council meeting on 16 April 2020, Council resolved to:

1. *“Defer on application 50% of Sect 7.11 contributions payable from Construction Certificate stage to Occupation Certificate/Subdivision stage for all applications received or approved till December 2020;*
2. *Fast track Sect 4.55 and/or 4.56 applications requesting 50% Sect 7.11 deferrals to Occupation/Subdivision stage for applications already approved but yet to be issued a Construction Certificate;*
3. *Commit to drive down the outstanding DA currently being determined and allow the use of external providers should this be required; and*
4. *Amend the Contributions Plan to remove the requirement of a bank guarantee (for the full amount of the contribution payable), adopt immediately if permissible, otherwise exhibit for statutory 28 days period”.*

A Contributions Plan is the mechanism used by Council to collect funds from developer when new development occurs. Council has six (6) Contributions Plans that cover the entire LGA:

- Liverpool Contributions Plan 2009
- Liverpool Contributions Plan 2008 - Edmondson Park
- Liverpool Contributions Plan 2014 - East Leppington 2014
- Liverpool Contributions Plan 2014 - Austral and Leppington North
- Liverpool Contributions Plan 2018 - Liverpool City Centre
- Liverpool Contributions Plan 2018 - Established Areas

Timing of Payments

Each Contributions Plan contains a clause identifying the timing of payments. This clause typically requires the payment of contributions prior to the issue of a Construction Certificate if building work is proposed, and prior to the issue of a subdivision certificate where only subdivision is involved.

To implement Item 1 of the resolution, the following wording needs to be added to the timing of payment provisions in each plan.

Covide-19 Response

For Development Applications lodged or approved between 16 April 2020 and 31 December 2020 and for Section 4.55 modifications lodged in the same period which seek to modify the relevant contributions condition of a development consent for which any contributions have not yet been paid, 50% of the contribution can be paid prior to the issue of a construction certificate with the remaining 50% payable prior to the issue of the first occupation certificate. Any applications during this period that include subdivision must have all contributions paid prior to the issue of the Subdivision Certificate.

For such applications, Council will waive the requirement to have an unconditional bank guarantee in place for the duration of the deferral.

The location of the change in each plan included below in Table 1.

The change is proposed for all of Council's Contributions Plans, including Section 7.11 and Section 7.12. Despite the technical differences between them, inclusion of Section 7.12 within this initiative is in the spirit of the resolution and will not jeopardise contributions funded projects.

Table 1 – Proposed changes to timing of payment

Contributions Plan	Section
Liverpool Contributions Plan 2009	Insert in 3.7.1 Levying of Contributions
Liverpool Contributions Plan 2008 - Edmondson Park	Insert in 3.7.1 Levying of Contributions
Liverpool Contributions Plan 2014 - East Leppington 2014	Insert in 2.9.1 Timing of payment
Liverpool Contributions Plan 2014 - Austral and Leppington North	Insert in 2.9 Payment of Contributions – Timing of Payment
Liverpool Contributions Plan 2018 - Liverpool City Centre	Insert in 2.8 Payment of Contributions – Timing of payment of the levy
Liverpool Contributions Plan 2018 - Established Areas	Insert in 3.8 Payment of Contributions – Timing of payment of the contribution

Council is unable to extend the payment timeframe of applications for subdivision, as the subdivision certificate is the final administrative step in that application process. As such, this change will not impact the payment of contributions for applications only involving subdivision.

Deferral of Payments

Each Contributions Plan contains a clause enabling deferred payments that requires the provision of an unconditional bank guarantee as shown below:

“Deferred payments as outlined above are acceptable only where an unconditional bank guarantee is provided for the amount deferred. Bank guarantees will be accepted on the following conditions:

- *The bank guarantee must carry specific wording, for example, "drainage contributions for Stage 3".*
- *The bank guarantee will be for the contribution amount plus the estimated amount of compound interest foregone by Council for the anticipated period of deferral. (Refer to formula in section 3.7.3).*
- *Council may call up the bank guarantee at any time without reference to the applicant, however, the guarantee will generally be called up only when cash payment has not been received, and land is not dedicated or material public benefit not provided by the end of the period of deferral.*
- *The period of deferral must be for a limited time only as agreed where land is to be dedicated or a material public benefit is to be provided. In merit cases, the period of deferral will be as approved by Council. The period of deferral may be extended subject to providing a renewed bank guarantee, which includes anticipated future interest.*

- *Council will discharge the bank guarantee when payment is made in full by cash payment, land transfer or by completion of works in kind.”*

This existing provision requires the provision of a bank guarantee to the same value of the amount of contributions to be deferred.

To implement Item 4 of the resolution, the following wording needs to be added to the deferred payments clause of each Plan:

Covid-19 Response

For Development Applications lodged or approved between 16 April 2020 and 31 December 2020 and for Section 4.55 modifications lodged in the same period which seek to modify the relevant contributions condition of a development consent for which any contributions have not yet been paid, a bank guarantee for the deferred amount is not required.

The location of this change in each Plan is detailed in Table 2 below:

Table 2 – Proposed changes to deferral of payment

Contributions Plan	Section
Liverpool Contributions Plan 2009	Insert in 3.7.2 Deferred Payments
Liverpool Contributions Plan 2008 - Edmondson Park	Insert in 3.7.2 Deferred Payments
Liverpool Contributions Plan 2014 - East Leppington 2014	Insert in 2.9.3 Deferred Payments
Liverpool Contributions Plan 2014 - Austral and Leppington North	Insert in 2.9 Payment of Contributions – Deferred Payments
Liverpool Contributions Plan 2018 - Liverpool City Centre	Insert in 2.8 Payment of Contributions – Deferred Payments
Liverpool Contributions Plan 2018 - Established Areas	Insert in 3.8 Payment of Contributions – Deferred Payments

Council’s resolution to allow deferred payments without a bank guarantee is aimed at easing potential cash flow issues for developments during the current economic circumstances associated with Covid-19. The deferral process will ensure the full payment is received prior to occupation, to support the additional population and demands upon local infrastructure.

Included on this business paper are two other reports dealing with issues related to contributions. It is the intent that where two reports impact a single contributions plan, all necessary changes will be made to the plan prior to exhibition. This way continued efficient operation of our contributions system can be ensured.

To complement the changes above, each Contributions Plan will need to have an update to the table of amendments.

The draft Contributions Plans will be placed on exhibition concurrently for 28 days in accordance with the requirements of the *Environmental Planning and Assessment Act 1979* and *Environmental Planning and Assessment Regulation 2000*.

To expedite the implementation of these amendments, it is recommended that the adoption of the amendments to Plans be delegated to the CEO. If adopted, Council will be notified of the commencement of these provisions via the CEO update.

Prior to the adoption of the various amendments, the standard condition of consent for contributions will be updated to highlight the option to defer payments. The updated standard condition (Edmondson Park example used) is provided below, with the new text shown in bold:

As a consequence of this development, Council has identified an increased demand for public amenities and public services. The following payment is imposed in accordance with Liverpool Contributions Plan 2008 Edmondson Park as amended.

The total contribution is \$ (insert amount) and will be adjusted at the time of payment in accordance with the contributions plan.

A breakdown of the contributions payable is provided in the attached payment form. The Contributions Plan may be inspected online at www.liverpool.nsw.gov.au Payment must be accompanied by the attached form.

In response to Covid-19, Council is providing for deferred payment options, for applications lodged or approved between 16 April 2020 and 31 December 2020. These provide for a deferral of 50% of the contribution amount to the occupation certificate stage. Please contact Council to discuss these options.

During the period from now until the various Plans are amended, payments may still be deferred, but only if the deferred amount is secured by a bank guarantee, consistent with the existing Contributions Plans.

Legal advice was provided regarding the potential to immediately provide for a 50% deferral of contributions to the occupation certificate stage, without a bank guarantee, (i.e. before the various Contribution Plans are amended). The advice is that including a condition on the consent that is inconsistent with the relevant Contributions Plan may result in:

- A consent being rendered invalid by the Court, causing uncertainty for the applicant; and
- Unpaid contributions due to an inconsistency between a consent condition and the relevant Contributions Plan, causing financial burden for Council.

The amended wording of the condition (above) will allow for any consents issued between now and the adoption of Plan amendments to defer payments with a bank guarantee. Alternatively, applicants will be able to choose to wait, a relatively short amount of time, until the outcome of the plan amendment process. If plan amendments are adopted as proposed, applicants will be able to defer payments, without a bank guarantee. As per the condition, applicants will be encouraged to contact Council so that the impact on contribution payments during this interim period can be discussed fully. Importantly, no further modification to the wording of the condition will be required if the plan amendments are adopted.

If the proposed plan amendments are adopted, the standard condition will be reworded to more specifically explain the deferred payment options (i.e. 50% payment prior to CC and 50% prior to OC) for the duration of the specified Covid-19 response period.

CONSIDERATIONS

Economic	Deliver a high-quality local road system including provision and maintenance of infrastructure and management of traffic issues.
Environment	Manage the environmental health of waterways. Support the delivery of a range of transport options.
Social	Regulate for a mix of housing types that responds to different population groups such as young families and older people.
Civic Leadership	Deliver services that are customer focused. Operate a well-developed governance system that demonstrates accountability, transparency and ethical conduct.
Legislative	Environmental Planning and Assessment Act 1979 Environmental Planning and Assessment Regulation 2000

ATTACHMENTS

Nil