

TITLE: Separate Rate – Developer Contributions: Payment, Rebate, Postponement Policy

1. PURPOSE

It is the policy of the Mount Barker District Council that any separate rates declared on land within the Council area for the purpose of securing the obligations of developers in respect of direct infrastructure contributions will be subject to the payment, rebate and/or postponement provisions of this Policy.

2. SCOPE

This Policy is to assist Council in its decision making functions and to the operation of the payment, rebate and postponement provisions contained in the Local Government Act 1999 relative to the application of a separate rate.

3. POLICY PRINCIPLES – OUR COMMITMENT

This Policy will provide guidance to developers (and landowners, as the case may be) as to the circumstances in which the payment of a separate rate will be due or otherwise postponed or rebated.

4. DEFINITIONS

Direct Infrastructure Works – the construction of works adjacent to or in the vicinity of the land required as a consequence of the Proposed Development. Direct Infrastructure Works to be also known as Required Infrastructure Works and vice versa as the case may be.

Indirect Infrastructure Works – new or upgraded infrastructure within the Council's area.

Required Infrastructure Works – the construction of works or augmentation of existing works adjacent to or in the vicinity of the land required as a consequence of the Proposed Development.

Separate Rate - Section 154 of the Local Government Act 1999 enables Council to declare a separate rate on rateable land within a part of the area of the Council for the purpose of planning, carrying out, making available supporting, maintaining or improving an activity that is, or is intended to be, of particular benefit to the land, or the occupiers of the land, within that part of the area, or to visitors to that part of the area. It is a charge on the land.

Certificate of Liabilities – a certificate issued by Council on application by or on behalf of a person who has an interest in land within the area stating the amount of any liability for rates or charges on the land imposed.

District Wide Residential Plan Amendment Report (PAR) - Council has developed a District Wide Residential Plan Amendment Report which supports residential development in the Townships of Mount Barker, Littlehampton, Nairne and Meadows.

Developers shall mean a company or person(s) with obligations in accordance with the Agreement for the Direct Infrastructure Works.

5. ROLES & RESPONSIBILITIES

Council:

- Provide a relevant policy

Chief Executive Officer:

The Chief Executive Officer is responsible to Council for managing the funds of Council to ensure that the objectives of Council are achieved in an effective and efficient manner.

General Managers:

- Initiate Separate Rate for the Direct Infrastructure Works and rebate upon completion of works to the satisfaction of the Council.

Others:

- **Team Leader Revenue:**
Raise, postpone and rebate Separate Rate.
- **Team Leader Financial Accounting:**
Update Council Asset Register upon completion of Direct Infrastructure Works.

6. POLICY STATEMENT

Council has entered into Agreements with various developers and landowners that recognise the developer's concept for development (referred to as "the

Proposed Development") of land within the Council area and the developer's willingness to construct works adjacent to or in the vicinity of the Proposed Development ("the Direct Infrastructure Works").

In each Agreement the developer has agreed, at the developer's costs, to undertake or procure the construction of the Direct Infrastructure Works.

Council is seeking security from developers for their obligations in accordance with the Agreement for the Direct Infrastructure Works. As a means of providing adequate financial security for the Council for the performance by the developer of the construction of the Direct Infrastructure Works a separate rate will be declared under the Local Government Act 1999. A separate rate will only not be declared if the developer has agreed with Council an alternative security mechanism, e.g. a bank guarantee.

The declaration of the separate rate provides adequate security for performance by the developer of his/her/its obligations with respect to Direct Infrastructure Works in accordance with Recital E and Clauses 1.3 and 1.4 of the Agreement, or Recital E and Clauses 1.1 and 1.2 of the Agreement relating to rateable land at Meadows, referred to above and is a charge on the land.

6.1 Local Government Act 1999 (the "Act") Provisions

The Council is to declare a separate rate on certain rateable land within a part (or parts) of its area for the purpose of securing the construction of Direct Infrastructure Works at the costs of developers. The Direct Infrastructure Works will be of particular benefit to the land and to occupiers of the land that is the subject of the Proposed Development and to visitors to that part of the Council area.

Payment of the separate rate will fall due – unless the Council has entered into a specific agreement with a principal ratepayer that the rate is to be payable in such instalments and on such days as is set out in that agreement – in four equal or approximately equal instalments during a particular financial year (or years) as stipulated by the Council in the declaration of the separate rate and notified in a rates notice.

The Act provides (at Section 182) for the Council, in circumstances of hardship, to postpone the payment of rates for such period as the Council thinks fit.

The Act also provides (at Section 166) that the Council may grant a rebate of rates (including on such conditions as the Council thinks fit) where, amongst other things, the rebate is desirable for the purpose of securing the proper development of its area. The rebate may be up to (and including) 100 per cent of the relevant separate rate.

6.2 Agreement Obligations

This Policy will apply:

6.2.1 in circumstances where a developer has entered into an Agreement with the Council (see Clause 5.0 of this Policy) which creates obligations to procure or provide payment for Direct Infrastructure Works (see Clause 5 of the Agreements) which are secured by the declaration of a separate rate, or

6.2.2 for those sites that are included in the PAR, but in respect of which the landowner has advised the Council it is not their intention to enter an Agreement with Council regarding the provision of Direct Infrastructure Works where Council will proceed to seek to implement such alternative security scheme applying to such sites applying the principles of private sector contributions to infrastructure set out in the Agreement.

6.3 Annual Business Plans

This Policy will be included, by reference or otherwise, within the Council's Annual Business Plans wherever the separate rate for the construction of Direct Infrastructure Works is included in that Annual Business Plan.

This Policy will be applied by the Council at its discretion:

- without application by a principal ratepayer where it is in possession of sufficient information to be satisfied that the payment of the separate rate should be postponed or rebated; and
- otherwise, upon application (and the provision of such information as the Council requires) by a principal ratepayer;

This Policy does not and is not intended to limit the discretion of the Council in issuing, following application, a certificate of liabilities under the provisions of Section 187 of the Act. The Developer's obligations under the Agreement survive any transfer of the rateable land (or the Developer's rights or interest in the rateable land) from the Developer to any third party.

Any principal ratepayer who is aggrieved by a determination of the Council under this Policy or by the application of this Policy by the Council may seek a review of that decision in accordance with the Council's Review of Decisions Policy under Section 270 of the Act – in accordance with the time limitations set out therein.

This Policy has no application or relevance to any general rate(s), service rate(s), service charge(s) and/or separate rate(s) which are unrelated to Direct Infrastructure Works.

Where a separate rate for the purposes of Direct Infrastructure Works ceases to be of application to any particular land because the Direct Infrastructure Works have been completed to the satisfaction of the Council this Policy will also cease to have any application or relevance to that land.

6.4 Postponement

Where Direct Infrastructure Works are progressing to the satisfaction of the Council in accordance with the terms of the Agreement entered into between the Council and the developer (and/or the landowner) the payment of the separate rate will be postponed by the Council.

A postponement of the payment of the separate rate may be granted on such conditions as the Council determines. The Council will not ordinarily impose conditions on a postponement relying, instead, on the general unconditional postponement. Where, however, conditions are imposed by the Council these will be notified in writing to the principal ratepayer.

If the separate rate is at any time required to be paid by the principal ratepayer because the Council revokes the postponement, the Council will, provide the principal ratepayer with at least 30 days written notice of the revocation and will require payment to be made in four equal, or approximately equal, instalments in accordance with this Policy.

The separate rate will not be subject to the imposition of interest during the period of postponement.

Where the Direct Infrastructure Works are completed to the satisfaction of the Council the amount of the separate rate postponed will be rebated in total in accordance with this Policy.

If the payment of the separate rate is not postponed in accordance with this Clause 6.4, it will be due and payable in accordance with Clause 6.6 of this Policy.

6.5 Rebate

The Council has the power to rebate a separate rate in whole or in part. The power to do so in the circumstances envisaged by this Policy arises under Section 166(1)(a) of the Act because the Council is of the opinion that the Proposed Development in general terms and the Direct

Infrastructure Works specifically, are desirable for the purpose of securing the proper development of the Council area.

Where the Direct Infrastructure Works are completed to the satisfaction of the Council, the amount of the separate rate outstanding will be rebated at 100 per cent. This may amount to a rebate of the total amount of the separate rate declared or to a rebate of part of the total amount declared where the Council has called upon part of the separate rate funds to complete the Direct Infrastructure Works to its satisfaction.

Where an individual allotment which has been created through a plan of subdivision is sold by a developer (or a landowner) to a third party purchaser for value, the Council may determine at that point in time to grant a partial rebate of the total amount of the separate rate outstanding being an amount which the Council, in its absolute discretion, determines to equate to the portion of the separate rate attributable to that allotment. Where the Council grants a rebate in accordance with this provision it will issue a 'NIL' certificate of liabilities in respect of the individual allotment under Section 187 of the Act (where a certificate has been applied for by or on behalf of a person with an interest in the land).

Where the separate rate applies to any land that is not subject to an Agreement between a developer and the Council (and any landowner) and/or is not otherwise subject to any development proposal, the Council will rebate the separate rate which applies to that land at 100 per cent.

6.6 Payment

If no other provision of this Policy provides relief from payment of the separate rate by way of postponement or rebate, the separate rate will be due and payable in accordance with the rates notice issued under Section 181 of the Act.

For the avoidance of doubt, wherever the Council is required to undertake or procure the Direct Infrastructure Works the payment of the separate rate will occur in accordance with Section 181 of the Act.

In circumstances where the separate rate is due and payable, it is a liability of the principal ratepayer of the land.

This Policy does not and is not intended to fetter the power of the Council under Section 181(5) of the Act to agree with a principal ratepayer that the separate rate will be payable in such instalments falling due on such days as the Council thinks fit.

Subject to Clause 5.5 of this Policy and to any determination of the Council to the contrary, the postponement of the separate rate will be revoked and the separate rate will become due and payable upon the transfer of the land by the developer and/or landowner.

7. TRAINING / EDUCATION

Training is provided to CGG and Council Members when communicating the details of the Long Term Financial Plans and annual budgets.

8. REVIEW

This Policy will be reviewed:

- every three years; or
- the frequency dictated in legislation; or
- earlier in the event of changes to legislation or related Policies and Procedures; or
- if deemed necessary by the Manager Financial Services.

9. ACCESS TO THE POLICY

The Policy is available for public inspection at the Customer Service Centre, at the Local Government Centre, 6 Dutton Road, Mount Barker, South Australia and on the Council's website www.mountbarker.sa.gov.au

10. FURTHER INFORMATION

For further information on this Policy, please contact:

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APPLICABLE LEGISLATION AND RELATED DOCUMENTS:	Local Government Act 1999 Related documents Indirect Developer Contribution Policy Infrastructure Contribution Developer Separate Rate Policy		
COMMUNITY PLAN 2020-2035 REFERENCE:	List applicable IP Strategy 3.2 Partner with developers to contribute financially to providing community infrastructure.		
REVIEW CYCLE	<p>This Policy will be reviewed:</p> <ul style="list-style-type: none"> - every three years; or - the frequency dictated in legislation, or - earlier in the event of changes to legislation or related Policies and Procedures or ; - if deemed necessary by the Manager Financial Services. <p>It is recognised that from time to time circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Council department, a change to the name or a State or Federal Department, and a minor update to legislation which does not have a material impact. However, any change or update which materially alters this document must be by resolution of Council (if statutory) or the Chief Executive Officer (if administrative).</p>		
NEXT REVIEW DATE	December 2026		
DOCUMENT HISTORY:			
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VERSION 2.0			
VERSION 3.0			
DOCUMENT LOCATION:	Council website 4 January 2024 Available for inspection, downloading or printing from our website www.mountbarker.sa.gov.au		
	This Policy is available for inspection, during business hours at: Mount Barker District Council, Level 1, 6 Dutton Road, Mount Barker		