

Strategy and Assets Committee

Meeting Date: Tuesday, 09 March, 2021
Location: Council Chambers, City Administrative Centre, Bridge Road, Nowra
Time: 5.00pm

Membership (Quorum - 5)
Clr John Wells - Chairperson
Clr Bob Proudfoot
All Councillors
Chief Executive Officer or nominee

Addendum Agenda

Reports

CEO

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SA21.43 COVID-19 Contributions Discount Subsidy Policy - Proposed Amendments

HPERM Ref: D21/92206

Department: Business Assurance & Risk
Approver: Stephen Dunshea, Chief Executive Officer

Reason for Report

To report back to Council on the practical implementation of proposed amendments to the [COVID-19 Contributions Discount Subsidy Policy \(POL20/23\)](#) as required by MIN21.116.

Recommendation (Item to be determined under delegated authority)

That Council:

1. Endorse the recommended amendments to the COVID-19 Contributions Discount Subsidy Policy (POL20/23) as outlined within the report to enact the changes in MIN21.116.
2. Extend the review date of the Policy by one additional year to 7 March 2022.
3. If a period of public notice is required to facilitate Parts 1 and 2, commence this in accordance with legislative requirements as soon as possible and if any submissions are received that these be considered in a further report to enable the finalisation of the Policy. If no submissions are received, proceed to finalise the amendment to the Policy as notified, without any further reports.
4. If a period of public notice is not required, immediately make the amendment to the Policy as per this resolution, without any further reports.

Options

1. As recommended.

Implications: The changes will enable refunds to be processed in line with Part 2 of MIN21.116.

2. Council makes an alternative recommendation.

Implications: This will delay reconsideration of the refused subsidy requests that have been identified.

Background

At the 2 March 2021 meeting of the Development and Environment Committee, Council resolved (MIN21.116):

“That the COVID-19 Refund Policy be clarified by being amended to read in the relevant parts as follows.

1. *The Applicant/Owners of a Development where the Application was lodged before the commencement date of the Policy are eligible for a refund of S7.11 and S64 contributions as defined in the Policy if an Occupation Certificate has not been issued prior to the date the Policy came into force, in the case of staged applications*

before the subject date; the stages which are not the subject of a previous Occupation Certificate remain eligible for a refund.

2. *Developments which have been completed and an occupation certificate has been issued after the date of the commencement of the policy retain the right to a refund within the Policy guidelines.*
3. *If any applications for refunds have been refused because of this inconsistency in policy interpretation, such applications be reassessed in line with amended Policy.*
4. *Should there be any issues in respect of the implementation of this policy clarification, the CEO report back in respect of that part of the motion."*

This resolution seeks to amend the adopted [COVID-19 Contributions Discount Subsidy Policy](#) (the Policy) to specify that a consent/certificate issued prior to 7 April 2020 (the commencement date of the Policy) is eligible for the subsidy discount if an Occupation Certificate has not been issued prior to that date.

The current adopted Policy is already consistent with Part 1 of the resolution, as long as the following existing criteria are met:

- Contributions have not been paid before 7 April 2020 for the development or the relevant stage of the development.
- The application is made within 2 years of the date of issue of the consent/certificate; and the
- Criteria in Section 2.2 can be met.

The Policy does qualify that an applicant for a “building” development would not be eligible for the subsidy discount if an Occupation Certificate has been obtained prior to requesting the refund, regardless of whether the consent/certificate was issued before or after 7 April 2020.

To date the main issue appears to be that some subsidy requests have been refused because an Occupation Certificate for a “building” has been issued prior to the subsidy request being submitted to Council for consideration. Currently, staff have only refused four (4) discount subsidy requests, all from the same developer, as they were received after the Occupation Certificates had been issued for each development in question.

If this is the case, it is suggested that it would be more appropriate to amend the Policy (excerpt below) as follows (yellow highlighting being additions, yellow strikethrough being deletions). This remains consistent with Council’s original resolution to encourage as much economic activity as possible during the COVID period.

2. PROVISIONS

2.1. Application of Policy

*The Policy applies to development proposals (including individual stages within a development proposal) which, in the opinion of the Council’s Chief Executive Officer, or his delegate, will result in the creation of employment (construction and/or operational), or places of employment, for example (but not limited to) new retail buildings, buildings of a commercial nature, industrial development, subdivisions, agricultural activities and the like (**Eligible Development**).*

Any Eligible Development that has been the subject of an operational development consent or complying development certificate will qualify for the discount set out in section 2.2 below where:

- *Development contributions under s7.11 of the Environmental Planning & Assessment Act 1979 (EPA Act) have not been paid before 7 April 2020 for the development or the relevant stage of the development; and*
- *For buildings, an Occupation Certificate has not been issued before 7 April 2020 for the development or the relevant stage of the development; and*
- *An application is made for the discount:*
 - *By 7 April 2022 for a development consent or complying development certificate issued prior to 7 April 2020.*
 - *Within 2 years of the date of issue of a development consent or complying development certificate issued on or after 7 April 2020.*

2.2. Payment of Discount Subsidy

The Policy requires full payment of the development contributions required to be paid under a development consent for the Eligible Development. Council will then pay an amount of 50% of the development contributions paid (subject to the exclusions in section 2.3 below) as a discount subsidy once the Council's Chief Executive Officer, or his delegate, determines that the Eligible Development has reached the following stage, and after a request for the discount subsidy has been received from the owner of the land (or other party as agreed to by the Chief Executive Officer, or his delegate) on which the Eligible Development is to be carried out:

- *Buildings: Approximately 25% completion - Being completion of the slab for the entire development or stage of development. ~~The development cannot have received an Occupation Certificate.~~*
- *Infrastructure: Approximately 25% completion.*
- *Subdivision:*
 - *No infrastructure: At the point of approval of the Subdivision Works Certificate for each stage of the subdivision.*
 - *With associated infrastructure: Approximately 25% completion (e.g. roads and associated infrastructure, excluding bulk earthworks).*
- *Activities/Use (where the development does not include building/construction works) – Following payment of contributions.*

If a property changes ownership, the discount subsidy entitlement will remain with the land, and be payable to the owner of the land (or other party as agreed to by the Chief Executive Officer, or his delegate) at the time the discount subsidy is applied for and paid.

The above change will enable refunds to be processed in line with Part 2 of the March 2021 (MIN21.116) Resolution. This would include the reconsideration of the four (4) refused subsidy requests to date, in line with Part 3 of MIN21.116.

As the subsidy acts "for private gain", the *Local Government Act 1993* specifies that a financial benefit cannot be received until a public notice period of the proposal to pass the necessary resolution has been given. The current adopted Policy went through a public notice period, and as the proposed change will make the subsidy more widely available, public notice (a period of 28 days) may need to be given for the subsequent amendment.

At the time of printing this report, legal advice has been sought to confirm if such a requirement exists given the nature of the proposed amendments outlined in the resolution, but formal advice has not yet been received.

If a period of public notice is required, this will commence as soon as possible in accordance with legislative requirements. If any submissions are received and if deemed necessary, a further report to consider the submissions and enable finalisation of the Policy will be provided to Council. If no submissions are received, or if matters raised in any submissions are deemed non-significant, Council staff will proceed to finalise the amendment to the Policy as notified, without any further report to Council.

If legal advice confirms that a period of public notice is not required, then the amendment to the Policy will proceed to finalisation as per this resolution, without any further reports.

It is noted that this Policy applies to Section 7.11 development contributions only. The March 2021 resolution applies to both Section 7.11 and Section 64 contributions. Any changes to Shoalhaven Water's [Section 64 \(Headworks\) contributions/charges discount subsidy](#) would need to be clarified and separately addressed.