

FINANCIAL ASSISTANCE FOR NOT FOR PROFIT ORGANISATION – FEES AND CHARGES FOR PYRAMID RESIDENTIAL CARE CENTRE INCORPORATED FOR THE DISCRETIONARY FULL WAIVER OF LEVIED CHARGES FOR AN EXTENSION TO EXISTING RETIREMENT VILLAGE AT 65-97 CAIRNS ROAD, GORDONVALE DIVISION 1

8/8/1163 | #7424803

RECOMMENDATION:

That Council:

1. Enters into an Infrastructure Agreement with Pyramid Residential Care Centre Incorporated for a partial waiver of levied charges to the sum of \$497,946 associated with Stages 1 and 2 of the Approved Development in accordance with the Financial Assistance For Not For Profit Organisations – Fees & Charges General Policy; and
2. Delegates authority to the Chief Executive Officer in accordance with the Local Government Act 2009 (Qld) to enter into contracts, negotiate, finalise, and execute any and all matters associated with the Infrastructure Agreement with Pyramid Residential Care Centre Incorporated on the basis outlined within the report, including any amendments as agreed by the parties.

INTERESTED PARTIES:

Pyramid Residential Care Centre Incorporated
Gilvear Planning Pty Ltd
Clarke and Prince Architects Pty Ltd

Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

EXECUTIVE SUMMARY:

Council is in receipt of a request from Gilvear Planning Pty Ltd on behalf of Pyramid Residential Care Centre Incorporated (the **Developer**) for the waiver of Levied Charges under Council's *Financial Assistance For Not For Profit Organisations – Fees & Charges General Policy* (the **Policy**) for Extensions to the Existing Retirement Village at 65-97 Cairns Road, Gordonvale, formally described as Lot 185 on SP267837 (the **Site**). The request was received on 11 March 2024 (Council Reference: #7386805).

The Developer has requested the full waiver of Infrastructure Charges to the sum of \$1,116,088.04 (no GST and indexed to March 2024) levied under Development Permit 8/8/1163 for Material Change of Use for Extensions to an Existing Retirement Village, over the subject site to be delivered and managed under an Infrastructure Agreement (an **IA**). The request lodged sought a waiver of infrastructure charges for Stages 1, 2 and 3.

The site presents a 50 bedroom Retirement Village known as the *Pyramid Residential Care Centre*, which has been in operation on the land since 1975 (nearly 50 years). The existing Retirement Village contains several single storey buildings that provide a variety of residential accommodation and aged care services.

The development proposal, which is nearing completion, seeks to refurbish and expand the existing Retirement Village over a series of stages. The final development product is proposed to comprise the following:

- Refurbished central facilities;
- A new pool, bowls green, and off-street car parking;
- 52 Residential Age Care Beds (containing a mix of 29 existing unaltered, 16 existing refurbished, and seven (7) new beds);
- 39 Independent Living Units (comprising of six (6) existing 2-bed units, four (4) new 2-bed units, 11 new 2.5-bed units, and 18 new 2-bed units); and
- Six (6) existing refurbished Assisted Living Units.

The development incorporates a range of living options from Aged Care Benefits, Independent Living Units, and Assisted Living Units.

With regard to the request before Council, Stage 1 infrastructure charge waivers represent a formalisation via infrastructure agreement against historic policies, with Stages 2 & 3 compliant with the current Financial Assistance For Not For Profit Organisations – Fees & Charges General Policy.

It is proposed that only Stages 1 and 2 are supported for a waiver of infrastructure charges at this stage, as these are the only stages that are either complete or under construction. Should Stage 3 works progress, an application and consideration under policy settings can take place at that time.

The table below provide an outline of the historic credits, charges per stage and total development charges as it relates to the request.

Category	Credit	Charge	Balance (estimate only)	Notes
Existing Use Credits	\$858,529.26		+\$858,529	Existing use credits available to the land.
Stage 1 A (Refurb)		0.00	+\$858,529	No charge - no formal change to site yield.
Stage 1 B		\$978,723	-\$120,194	Partially absorbed by credits with balance charges eligible but never formalised – proposed to be dealt with under IA.
Stage 2 (A & B)		\$377,752	-\$497,946	Proposed to be waived in line with current NFP Policy.
Stage 3A		\$309,070	-\$807,017	Future Stage.
Stage 3B		\$309,070	- \$1,116,088	Future Stage.
TOTAL:	\$858,529	\$1,974,617	\$1,116,085	

Note: all figures are calculated in accordance with Council's AICR No. 2 of 2021, indexed to 30 March 2024 (PPI) and are GST exclusive

BACKGROUND:

The site contains an existing Retirement Village which was constructed at the site in 1975 and has remained in operation for nearly 50 years.

On 14 September 2010, Council received a Material Change of Use application for the Extension to the Existing Retirement Village. The application was supported under Council Resolution at its Planning & Environment Committee Meeting held on 6 July 2011, with the Decision Notice granted 8 July 2011 (Council Reference: #2730392, #2730487, #3229897, & #3229802).

On 28 July 2011, Council received a request for a Negotiated Decision with representations to accommodate:

- Updated staging;
- Timing of payment of Developer Contributions (i.e. Infrastructure Charges);
- Refinement of external works;
- Connection requirements to the electricity network; and
- Refinement of requirements with Acid Sulfate Soil Investigation.

The request was decided under instrument of delegation, with the Negotiated Decision Notice issued on 6 September 2011 (Council Reference: #2730487, #3229802, #3254851, #3296572, & #3305993).

On 25 May 2013, Council received a Request for a Permissible Change (i.e., a change to the Development Permit) to:

- Clarify timing of works associated with Stage 1;
- Request to waive infrastructure charges levied on the development;
- Accommodate timing of:
 - Water supply and sewerage works; and
 - External works;
- Refine of drainage works; and
- Remove of conditions relating to Acid Sulfate Soil Investigation and Acoustic requirements.

The request was decided under instrument of delegation, with the Permissible Change issued on 17 September 2013 (Council Reference: #3988771, #3988705, & #4124425).

Importantly, for matters relating to the waiver of Infrastructure Charges, the assessments notes:

“In accordance with General Policy No. 1:04:52 - Financial Assistance for not for profit recreation, sporting and community groups – infrastructure charges relief the applicant has demonstrated it is a non-profit community organisation through the submission of a certificate of registration as a charity as part of the application. With respect to the policy the proposal falls under Category 1: Community and charitable not for profit organisations (which may rely upon volunteer or paid labour) and have no liquor licence and no ancillary commercial component. The applicability of the Policy allows that Council may, at the request of a non-profit community organisation, give a relief (in full or part) for the payment of infrastructure charges. The request must be made at the time the development application is submitted.

With regards to a Contributions rebate, the proposal qualifies for a 100% relief from payable contributions as per the table below (extract from General Policy No. 1:04:52 - Financial Assistance for not for profit recreation, sporting and community groups – infrastructure charges relief):

Category	Description	Examples	Development	Rebate Offered
1	Community and charitable not for profit organisations (which may rely upon volunteer or paid labour)	The Endeavour Foundation, Lifeline, St Vincent De Paul, Salvation Army	The construction of new facilities and have no liquor licence and no ancillary commercial component	100%

With regards to the above, although the proposal is eligible for 100% relief of contributions the Infrastructure Charges Notice and relevant conditions remain with the approval. Rather than the deletion of conditions (Conditions 5 and 6), it is the Advice Note that is amended to include the advice that the decision notice is subject to relief of 100% on the payment of the infrastructure charges.

Therefore, based on the above Council agree to the request for relief of 100% on the payment of the infrastructure charges; however do not agree to the removal of Conditions 5 and 6.”

Officers confirm that no agreement to formalise this waiver of the levied charges was pursued at that time.

On 30 April 2015, Council received a request to Extend the Relevant Period, with the Developer seeking an extension for a further four (4) years. The request was decided under instrument of delegation, with the Extension Decision Notice issued 28 May 2015 confirming the Development Permit is valid up to and including 6 September 2019 (Council Reference: #4717637, #4718801, & #4745864).

On 22 November 2016, 18 May 2021, & 5 April 2023, Council received and approved three (3) Generally In Accordance requests which sought to refine staging plans and confirm requirements for eligibility to waiver the levied Infrastructure Charges (Council Reference: #5282307, #6620331, #7167593, #7167722, & #7169598).

On 5 April 2023, Council received a Minor Change to accommodate changes to (broadly):

- Remove conditions relating to Developer Contributions (Conditions 5 and 6), replaced by an Infrastructure Charges Notice in accordance with Council’s Charges Resolution (No. 2 of 2021); allowing a formal application for the waiver to be made against the current Policy and the agreement formally captured by an IA;
- Parking, access, and stormwater / drainage arrangements (reduction in scope of works); and
- Update the plans to reflect the proposed changes as well as other administrative amendments.

This request was decided under instrument of delegation, with the Change (Minor) Decision Notice granted 7 March 2024. This Notice represents the latest, most relevant Permit to guide the development of the land (Council Reference: #7167727, #7176662, & #7370241).

In reviewing the development’s history, Officers acknowledged that Council’s position in supporting a waiver of the levied Infrastructure Charges has been maintained throughout its life; acknowledging that the Developer and/or the Development have continually demonstrated consistency with the relevant outcomes of the Policy (or a similar Policy that was in effect at the time). The Applicant’s current request to formally waiver the levied charges is in direct response to the recent advice and outcomes permitted via the Change (Minor) Decision Notice.

COMMENT:

Policy:

Council manages requests to waive infrastructure charges for not-for-profit organisations under the *Financial Assistance for Not-for-Profit Organisation - Fees & Charges General Policy*.

This Policy establishes a framework for the provision of financial assistance for Not-for-Profit organisations. It has been prepared to allow Council to consider applications from Not-for-Profit organisations for financial assistance in the form of a full or part waiver of specific fees and charges. Council's decision whether to give financial assistance either in a full or part waiver of fees and charges relating to infrastructure is discretionary under the Policy.

Assessment of any request received is guided by the Policy itself and its associated Administrative Instruction. Any waiver of Infrastructure Charges, approved under the General Policy, can only be given effect under an IA.

In considering this request, a full assessment against the relevant provisions of the Policy was completed.

<i>Financial Assistance For Not For Profit Organisations – Fees & Charges General Policy</i>	Officer Assessment
7. Infrastructure Charges	
<p><i>For Infrastructure Charges, the levied charge calculated in accordance with Council's Charges Resolution is wholly waived up to a maximum cap of \$500,000.00, when evidence is provided that the Applicant is a Not for Profit as defined.</i></p> <p><i>Where the request for an infrastructure charges waiver exceeds associated with a Not for Profit \$500,000.00, the matter will be eligible for consideration by the full Council on a case by case basis.</i></p>	<p>Complies</p> <p>The Developer / organisation has suitably demonstrated their Not for Profit status through providing a copy of their <i>Certificate of registration as a Charity</i>.</p> <p>A search for the organisation via the Charity Register on the <i>Australian Charities and Not-for-profits Commission</i> website has confirmed that the Charity is registered, and its reporting is up to date.</p> <p>This request seeks a full waiver of the levied charges being \$2,566,169.68 (indexed to March 2024), which exceeds the prescribed cap by \$2,066,169.68. Accordingly, the full waiver requires consideration by the full Council.</p>
<p>Note: <i>This does not apply to infrastructure charges levied for commercial uses, reconfigurations of a lot or any other application where such developments do not provide a significant community role or benefit, and which are not considered to be 'not-for-profit' developments.</i></p>	<p>Complies.</p> <p>The charges have:</p> <ul style="list-style-type: none">• been levied for a Material Change of Use; and• not been levied for a commercial use. <p>Considering the nature of the existing and proposed activities, the size and scale of the development, the period in which the organisation has been in operation within the Gordonvale locality, coupled with the various services they provide (aged care and related support services) and the various services required to operate the facility, the development is considered to provide a significant community role and benefit to the Gordonvale area.</p>

<p>Note: <i>Not-for-profit or charitable organisations that own, lease, manage or operate premises with poker machines are not eligible for an infrastructure charges waiver. Except in instances where the fees relate to a Council leased facility maintained wholly for community purposes that does not operate poker machines onsite.</i></p>	<p>Complies. The development/premises does not currently or intend to operate poker machines on the site. The organisation does not own, lease, manage, or operate any other premises that contain poker machines.</p>
<p>Note: <i>If Council supports an application to waive infrastructure charges levied for a development approval, the waiver must be managed by an Infrastructure Agreement.</i></p>	<p>Complies. In completing the Application Form (Council Reference: #7386805), the Developer has confirmed that they are willing to enter into an Infrastructure Agreement to manage this waiver.</p>

Infrastructure Agreement and Compliance with the General Policy

To maintain compliance with the General Policy, Officers recommend the IA be drafted using Council's standard template for applications made in accordance with the Policy, which includes the following unique clauses:

1. The Council maintains that in the event the approved use as provided for in the Development Approval ceases to operate within the terms of this Infrastructure Agreement, then the Development/Landowner must reimburse Council the value of the Levied Charges applicable at the time that the Infrastructure Agreement commenced;
2. If the development ceases to operate as a Not-For-Profit, the full levied charge waived by Council, being the value of the infrastructure charge at the time of the infrastructure agreement commencing, will be payable within 60 business days;
4. Ability for the changes to be included on any Rate Notice for the land as an amount payable to Council should they not be paid within the timeframe prescribed under Item 2 above;
5. The landowner must not sell or transfer the whole or any part of the land unless the written consent has first been obtained from Council; and

In this, it is noted that the Council cannot unreasonably refuse consent, particularly where the new landowner is able to demonstrate either of the following:

- a. Compliance with all the obligations of the IA; or
- b. Demonstrates that can pay the full value of the infrastructure charges that were waived under this agreement.

OPTIONS:

In considering the assessment of this request, the following Options are offered for consideration by Council:

Option 1: (Recommended)

That Council:

1. Enters into an Infrastructure Agreement with Pyramid Residential Care Centre Incorporated for a partial waiver of levied charges to the sum of \$497,946 associated with Stages 1 and 2 of the Approved Development in accordance with the Financial Assistance For Not For Profit Organisations – Fees & Charges General Policy; and
2. Delegates authority to the Chief Executive Officer in accordance with the Local Government Act 2009 (Qld) to enter into contracts, negotiate, finalise, and execute any and all matters associated with the Infrastructure Agreement with Pyramid Residential Care Centre Incorporated on the basis outlined within the report, including any amendments as agreed by the parties.

Option 2:

That Council:

1. Enters into an Infrastructure Agreement with Pyramid Residential Care Centre Incorporated for a discretionary full waiver of levied charges to the sum of \$1,116,088 associated with Stages 1, 2 and 3 of the Approved Development in accordance with the Financial Assistance For Not For Profit Organisations – Fees & Charges General Policy; and
2. Delegates authority to the Chief Executive Officer in accordance with the Local Government Act 2009 (Qld) to enter into contracts, negotiate, finalise, and execute any and all matters associated with the Infrastructure Agreement with Pyramid Residential Care Centre Incorporated on the basis outlined within the report, including any amendments as agreed by the parties.

Option 3:

That Council declines to enter into an Infrastructure Agreement with Pyramid Residential Care Centre Incorporated for the waiver of levied charges under the Financial Assistance For Not For Profit Organisations – Fees & Charges General Policy.

CONSIDERATIONS:

Risk Management:

The risk to Council in waiving these fees is low as the IA is a mechanism that can manage the use of the land where all monies can be recovered in an instance where the Developer/Landowner defaults on its arrangements.

While the Policy is not a formal legislative instrument, nor given effect under other statutory instruments, the Policy does provide guidance to the relevant parties/organisations on the expectations and direction of Council where full compliance with the Policy has been demonstrated.

Council Finance and the Local Economy:

The predominant risk to Council associated with this decision is financial, particularly given the scale of the amount sought to be waived that exceeds the minimum prescribed cap.

Generally, however, the financial risks have already been assessed and considered under the recommendation to adopt the Policy.

The waiver of the Levied Charges associated with the development will reduce the recovery of the costs of Council's trunk infrastructure provision and increases the reliance on other revenue sources to fund it. However, the development will benefit the local economy with clear economic and socio-economic benefits, through delivering a range of living options from Aged Care Benefits, Independent Living Units, and Assisted Living Units. Further, it is understood that the development has had a positive impact on the local and regional economy during its construction.

Community and Cultural Heritage:

The CairnsPlan 2016 Planning Scheme sets out framework to ensure development occurs where appropriate. The framework is reflected within the Overlay, Local Plan, Zone, and Development Codes of which this development application has been assessed against.

Natural Environment:

The CairnsPlan 2016 Planning Scheme sets out framework to ensure development occurs where appropriate. The framework is reflected within the Overlay, Local Plan, Zone, and Development Codes of which this development application has been assessed against.

There are no environmental risks associated with this development. A review of the subject land against Planning Scheme mapping confirms that the land is not impacted by any environmentally significant Overlays.

Corporate and Operational Plans:

The recommended action is consistent with the outcomes of the Corporate Plan relating to:

Focus Item 1: Reinforce an economy which supports a diversified and resilient economy which supports business innovation, growth, and jobs balanced with maintaining sound financial management including robust long-term modelling.

Focus Item 3: Delivering vital community infrastructure through land use planning which directly supports and sustains growth, liveability and offers a space which focuses on providing a quality life.

Focus Item 4: Directly provides a place and programs to support the wellbeing for members of the community.

Statutory:

The infrastructure planning and charging framework for Queensland is prescribed and managed under the *Planning Act 2016* (Qld) and the associated *Planning Regulation 2017* (Qld).

Section 113 of the *Planning Act 2016* (Qld) gives power to a Local Government to adopt charges by resolution (i.e., a charges resolution) for providing trunk Infrastructure for development. Councils' current charges resolution is the *Carins Regional Council Charges Resolution No. 2 of 2021*, which commenced 11 November 2021.

The ability for Council and a Developer to enter into an Infrastructure Agreement and the associated legislative requirements are provided for under the *Planning Act 2016* (Qld).

Policy:

Infrastructure charges are calculated and levied in accordance with Council's *Charges Resolution No. 2 of 2021*.

The *Financial Assistance For Not For Profit Organisations – Fees and Charges General Policy* was originally adopted under resolution of Council on 18 July 2018, replacing the *Financial Assistance for Not for Profit Recreation, Sporting and Community Groups – Infrastructure Charges Relief General Policy*.

The *Financial Assistance For Not For Profit Organisations – Fees and Charges General Policy* is not a formal legal instrument (of the charges resolution), nor given effect under other statutory instruments, and is open to Council to make a discretionary decision against the Policy.

Council does not presently have a formal Policy on Infrastructure Agreements. However, the *Planning Act 2016* (Qld) and Charges Resolution provide the basis for Infrastructure Agreements. In this instance, the matter has been managed to be generally consistent with the Charges Resolution.

CONSULTATION:

Internal consultation has taken place between Officers from the Planning, Growth and Sustainability and Financial Accounting Departments of Council. This consultation has taken place as part of general project works associated with the IA, including confirming the compliance with the Policy.

ATTACHMENTS:

Nil

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Claire Simmons
Executive Manager Development & Planning

A handwritten signature in black ink, appearing to be 'ES', with a horizontal line extending to the right.

Ed Johnson
Director Planning, Growth & Sustainability