

## Lump Sum Policy

### 1. Statutory authority for making policy

This Policy is made under section 56 of the Local Government (Rating) Act 2002 in respect of sums that may be paid in a financial year in anticipation of a liability for one or more targeted rates or for targeted rates for one or more specified activities, in subsequent financial years.

### 2. Commencement

This Policy came into force on 1 July 2004.

### 3. Policy to apply at discretion of the Council

This Policy applies at the discretion of the Council.

### 4. Definitions

In this Policy, unless the context requires otherwise:

- Area of benefit means the category or rating units, which, in the opinion of the Council, receives the benefit of a capital work.
- Capital work includes the proportion of physical works, which the Council determines is to be funded by any repayment loan.
- Loan charge means a targeted rate set and assessed to fund a repayment loan for a capital work.
- Loan servicing costs, in relation to any repayment loan for a financial year, means payments of principal and interest for that year.
- Lump sum means the amount of the loan charge for a particular rating unit in anticipation of the rating unit's liability for that loan charge for subsequent financial years less any applicable discount.
- Rating Act means the Local Government (Rating) Act 2002.
- Rating unit means a rating unit as defined in Section 5 of the Rating Act.
- Repayment loan means a loan or a series of loans on which interest and principal are paid annually so that at the end of a predetermined period all indebtedness under the loan or loans is repaid (and includes an internal loan with these features).

### 5.

## Principles

The following principles are to govern the way in which this Policy is applied:

- 5.1 This Policy should only be used for repayment loans where a loan charge has been or will be set and assessed over a defined area of benefit where the area of benefit has been approved by the Council.
- 5.2 The loan charge must be calculated by reference to:
  - a) the actual loan servicing costs plus an administration fee of 0.5% if the loan has been externally raised; or
  - b) the one year bank borrowing rate plus an administration fee of 0.5% if the loan has been internally raised.
- 5.3 Whenever a lump sum is offered to ratepayers, the lump sum will be offered in respect of the current outstanding amount of the repayment loan. To avoid any doubt, this clause is subject to clause 6.2.
- 5.4 For the purpose of applying this Policy, the rating unit is the basis for setting and assessing loan charges and the loan charge must be set in accordance with Section 18(2) of the Rating Act. However, the Council may, in appropriate circumstances, determine that for a particular project, this Policy applies on another basis that is authorised under the Rating Act and provided in the Council's revenue and financing policy.
- 5.5 It is the Council's intention that the number of rating units within the area of benefit remains as constant as possible throughout the period that the loan charge is set and assessed for the repayment loan.
- 5.6 Where, as a result of a subdivision, one or more new rating units are created within the area of benefit, a 'development contribution' will be paid in respect of each of those new rating units. The sub-divider must nominate:
  - i) to which rating unit the original lump sum applied or a loan charge applies; and
  - ii) to which rating unit(s) the development contribution(s) apply.
- 5.7 The rating unit(s) to which the development contribution(s) apply will not be liable for the loan charge.
- 5.8 When a connection is created from holding capacity the Council will not offer lump sums in respect of a repayment loan, or part of a repayment loan. These connections are paid via development contribution(s).
- 5.9 The Council will enter into agreements to extinguish debt when rating units change ownership. Such agreements must be dealt with between the vendor and purchaser.

of the rating unit with the Council accepting their decision as to which party will be responsible for the debt.

- 5.10 If any lump sum offers have been made before the commencement of this Policy, the basis of calculation on which those previous offers were made remains unchanged even though further offers may be made under this Policy.

## **6. How this policy will be applied**

- 6.1 The Council will determine [by way of the Selwyn Long Term Plan, Annual Plan or process] whether or not it will offer ratepayers of a defined area of benefit the option of paying a lump sum instead of a loan charge in the following financial year or years.
- 6.2 For example, the Council could determine as part of the 2018/2028 Long Term Plan process that ratepayers will be offered the option of paying a lump sum in the 2018/2019 financial year instead of paying a loan charge in the 2018/2019 financial year and subsequent financial years.
- 6.3 The Council must determine the period over which the repayment loan will be fully paid off.
- 6.4 The lump sum will normally be calculated as a fixed amount for all rating units in the area of benefit, by dividing the current amount of the repayment loan by the number of rating units in the area of benefit. The discount is the difference between this amount and the total amount of loan charges the rating unit would have paid until the repayment loan was fully repaid.
- 6.5 If this Policy applies the Council must notify each eligible ratepayer in accordance with Section 136 of the Rating Act of the option to pay the lump sum, and of the option to pay it in one amount or in instalments as determined by the Council.
- 6.6 The notice under Clause 6.4 must state that:
- i) The ratepayer must, within 30 days, notify the Council whether the ratepayer accepts the offer and whether the ratepayer wishes to pay the lump sum in one amount or by instalments.
  - ii) When the lump sum or the first instalment, as the case may be, must be paid.
  - iii) if that payment is not received by the due date the relevant loan charge will be assessed against the rating unit in the next financial year beginning on 1 July and subsequent financial years.
- 6.7 The Council must deliver an invoice to every ratepayer who has accepted the Council's offer. The invoice must contain the following information:

i) The address of the Council.

ii) The name and address of the ratepayer.

iii) The legal description or valuation number of the rating unit.

iv) The lump sum or instalment of the lump sum, which the ratepayer has notified the Council that he or she wishes to pay.

v) Where the lump sum amount may be paid.

vi) Any other information that the Council thinks fit.

- 6.8 If the ratepayer does not pay the lump sum or instalment of the lump sum, as the case may be, the relevant loan charge will be set and assessed against the rating unit in the next financial year beginning on 1 July and subsequent financial years.

- 6.9 Despite Clause 6.6, the Council retains discretion to accept any payment that does not constitute the full amount of the lump sum or instalment of the lump sum.

## **7. Notes**

- 7.1 The lump sum contribution provisions of Part IV (sections 62 – 78) of the Rating Powers Act 1988 are not reproduced in the Local Government (Rating) Act 2002.
- 7.2 Instead there is provision in section 56 for a policy for early payment of rates that will fall due in subsequent years. Section 55 authorises policies for early payment of rates in the current year.
- 7.3 Section 56 provides:

*“56 Policy for payment of rates for subsequent financial year*

*(1) A local authority may adopt a policy for the payment of rates in anticipation of rates for subsequent financial years.*

*(2) A policy of the kind referred to in subsection (1) may provide for either or both of the following circumstances:*

*(a) any sum may be paid in a financial year in anticipation of a liability for general rates in subsequent financial years;*

*(b) any sum may be paid in a financial year in anticipation of a liability for 1 or more targeted rates, or for targeted rates for 1 or more specified activities or groups of activities, in subsequent financial years.*

*(3) If rates are paid in accordance with a policy adopted under subsection*

*(1), the local authority must credit the payment in accordance with the policy and the instructions, if any, of the person making the payment.*

*(4) Section 55(2) and (3) applies, with the necessary modifications, to a policy adopted under this section.*

*(5) To avoid doubt, payments made under this section must be credited against future rates, whether or not the policy under which the payment was made is still in force when the rates are assessed.”*

7.4 Section 55 provides:

*“55 Policy for early payment of rates in the current financial year*

*(1) A local authority may adopt a policy for the payment of some or all rates that are identified in the rates assessment before the due date or dates for those rates in the current financial year.*

*(2) A policy adopted under subsection (1)*

*(a) must be adopted using the special consultative procedure; and*

*(b) may be included in the Long Term Plan.*

*(3) A policy adopted under this section may provide for the local authority to discount the amount of the rates if payment is made by a specified date before the due date or dates.”*

7.5 The legislation lacks clear authority to exempt a property (which has paid the rates in advance) from all future rating liability for a particular work. In other words, there is no express provision along the lines of Section 67(2)(b) of the Rating Powers Act 1988<sup>1</sup>. It does not actually change the rating requirement for future years. Instead, it simply means that the Council has some of the money in advance to pay the rates.

7.6 Because the legislation does not replicate the detailed provisions of Part IV of the Rating Powers Act 1988, it is necessary to include detail of the policy to achieve similar effect.

7.7 5.4 has the effect that unless the Council decides otherwise, the targeted rate will be a ‘uniform annual charge’.

7.8 5.5 may not be an issue. It is included to try to ensure that the amount of the annual targeted rate does not vary too much over the period of the repayment loan.

7.9 6.1 and 6.4 to 6.8 are designed to ensure that the policy will only have to rely on Section 56 and not Sections 55 and 56. It sets up a timeline to ensure certainty. Different dates could be used so long as the Council has certainty before it has to set the rates for any given year. Any particular decision to use the policy probably does not have to be in the annual plan.

7.10 Holding Capacity – As the name suggests, this is the dollar value or number of connections between what capacity is required to service the current population and what is being ‘held’ to service the future population. The Council, in making this decision to have holding capacity in a scheme, has to fund this cost until property owners, who create growth, repay it. Such a decision involves the Council owning an asset in infrastructure as opposed to having money in the bank. Although this decision is effectively swapping one asset ‘cash’ for another asset ‘infrastructure’, cash earns interest income while infrastructure does not. Interest income is used by the Council to reduce/subsidise the annual general rates levied.

When the Council has reduced interest income, general rates either have to increase or general rates funded expenditure has to be reduced. For this Council, this causes an inequity. Approximately 50% of all Selwyn residents provide their own sewerage disposal system (e.g. septic tanks). It is not fair for the 50% to have a general rate increase because they are not getting the benefit of a council provided sewerage system. To achieve equity, the Council makes an interest charge on those communities that have ‘holding capacity’ in their water and sewerage infrastructure. This interest charge is collected with the targeted rate that is levied to run/operate the infrastructure system. As more properties connect, and pay their development contribution, the holding capacity interest charge reduces.

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<sup>1</sup> This section, provided that, where an election had been made in respect of a separately rateable property to pay lump sum contributions, “no ratepayer shall be liable in respect of that property for any separate rate or separate uniform annual charge or annual charge under Section 30 of this Act or combination thereof, as the case may require, made and

levied under this Act to meet the cost of the work or the annual charges in respect of any special loan raised to meet the cost of the work”.