Attachment F: Payment timing changes

Introduction

1. The Contributions Policy 2019 extended the time for the payment of development contributions on residential developments due at grant of building consent by between six months and two years. This decision was made to better align the time at which development contributions were paid with when developers realise the returns from their development.
2. However, Auckland Council's ability to invest in the infrastructure the city needs to maintain service levels and to support growth is constrained by limits on our borrowing. Allowing developers to pay development contributions later than the earliest time at which payments can be required means we bear the cashflow impacts and have to delay some investments that could otherwise be made with those funds.
3. Given the impact of COVID-19 on the council's finances, council considers that it is appropriate to reconsider the time at which development contributions for residential development are required to be paid.
4. This section analyses options for making change to payment timing.

Context

Development contributions payment triggers

5. The Local Government Act 2002 provides that the council can charge development contributions at the grant of resource consent or the grant of building consent, see Additional Information at the end of this attachment. If a developer doesn't pay the development contributions assessed the council may for a:
    - resource consent:
        - withhold a certificate of title, section 224c (around a year after consent is granted)
        - prevent the commencement of the consent
    - building consent:
        - withhold issue of a code of compliance certificate.
    - certificate of acceptance or service connection:
        - withhold the certificate/service connection.
6. Residential development provides around 95 per cent of development contributions revenue with 5 per cent from non-residential development. For residential development council requires around:
    - 45 per cent of development contributions at the resource consent for subdivision stage
    - 5 per cent at the resource consent for land use stage and
    - 50 per cent at building consent.
7. Land developers seek a resource consent for the subdivision of land and subsequent issue of a certificate of title to sell sections to builders. Residential developers who develop and subdivide land and then undertake construction themselves may defer seeking a certificate of title until after building consent has progressed. This allows them to defer the requirement to pay development contributions to much later in the development process.
8. Not all development requires a resource consent for subdivision as the land may already be zoned for development e.g. smaller infill housing in brownfields areas. These developments become liable for development contributions at the building consent stage.

Contributions Policy 2019

9. Payment timing changes for residential development were introduced as part of the Contributions Policy 2019. The council extended the time developers had in which to pay development contributions triggered by a building consent. Payment was previously required at the grant of building consent. Under the 2019 Policy developers are required to pay:

    - six months after the granting of consent for developments of less than five dwellings
    - at issue of Code Compliance Certificate, around 12 months after granting of consent, for developments of five or more dwellings.

10. These changes affected the payment timing for around 45 per cent of development contributions revenue. The policy intention was to reduce outstanding development contributions debt and closer align payment timing with the time at which developers realise cash from their developments. The change was welcomed by developers.

11. The change to payment timing reduced the revenue the council had previously forecast to receive from development contributions by around $50 million for the 2019/2020 year. This was a cash flow timing effect. The council still receives these payments but just at a later time and without change would be a permanent timing effect.

12. Outstanding development contributions debt balances reduced markedly following the introduction of the payment timing changes and introduction of stronger collection processes, halving from $45 million in January 2019 to $22 million in December of the same year. Outstanding debt has subsequently risen as the council has relaxed its pursuit of debtors given the impact of COVID-19. Current outstanding debt (as at April 2021) is $37.5 million. When the economy recovers and the pace of development accelerates we will return to our previous approach to debt recovery. Accordingly, we expect debt to return to pre-COVID levels.

Payment security

13. The council has statutory powers to assist in recovery of unpaid development contributions, including registering a statutory charge on property where development contributions have not been paid. While the council has some aged development contribution debt, this is a very small proportion of the development contributions invoiced over the last nine years. In this time the council has written off less than $100,000 of development contributions debt out of $960 million invoiced.

Options for Payment Timing

14. The council has three options for payment timing:

    a) retain the status quo with amendments to address technical issues with payment timing for attached dwellings, see below
    b) amend the status quo for residential building consents currently charged at code compliance certificate to only apply to developments of five or more attached dwellings
    c) change payment timing for development contributions due at grant of building consent
        i. reverse the decisions made as part of the Contributions Policy 2019 and bring forward the payment of development contributions on residential building consent to the grant of building consent
        ii. bring forward payment of development contributions on non-residential building consents to the grant of building consent
    d) in addition to c) above bring forward the payment of development contributions triggered at resource consent for subdivision from the time a section 224(c) certificate is applied for to the grant of resource consent.

Attached dwellings

15. The existing policy wording for the residential developments of five or more dwellings currently specifies building consent for residential use containing five or more dwellings are treated as non-residential use for payment timing. This has led to consents being lodged under a parent property. This creates problems for our building inspection management and wasn't the intention of our original proposal.

16. The proposed new wording is:

    *Any single building consent for residential use which contains five (5) or more **attached** dwelling units, will be treated as non-residential use for invoice / payment timing. For avoidance of doubt, this does not apply for developments that contain individual building consents of less than five dwellings on the single consent.*

Development contributions required when granting subdivision consent

17. No other council requires immediate payment of development contributions required when granting resource consent for subdivision. Introducing a requirement to pay development contributions at the grant of subdivision consent would be major change from current practice. The changes would also introduce some administration issues and incentivise changes in developer behaviour. Auckland Council is not considering this as an option.

Analysis of Options

18. This section sets out the options for payment timing and the impact of potential change on the council and developers.

Assessment criteria

19. Each of the options is assessed against three criteria:
    - cashflow changes
    - relationship between timing of payment and demand on need to invest in infrastructure or receipt of benefits from infrastructure
    - impact on development.

Cashflow impact of bringing payment timing forward

20. Total development contributions cost recovery is determined by the growth share of capital expenditure. Earlier payment timing has no net effect on the council's cost recovery over the period of the Long-term Plan 2021-2031 or longer term. However, it will bring forward the time at which the council would receive payment. If payment timing is bought forward the net present value of development contributions revenue remains the same but the nominal value falls. Receiving revenue earlier lowers our interest costs and allows the development contributions price to be lower. With a lower development contributions price, our total revenue will be lower. Despite the lower revenue the net impact is neutral because of lower interest costs.

21. Bringing payment timing forward to the earliest date at which payment is allowed (with effect from 10 January 2022, the current proposed timing for implementation of the Contributions Policy 2021) would deliver the following total additional revenue for each of the options over the first three years of the 10-year budget:

    - building consent at granting: $96 million
      (if projects beyond 2031 in Drury are added $107 million)
    - resource consent for subdivision at granting: $120 million
    - combined impact is $218 million.

22. Bringing payment timing forward reduces the interest cost the council incurs reducing the cost to be recovered. This will lower the weighted average development contributions price to $19,300.

23. If the council consults on changes to payment timing, we expect developers to lodge consents prior to the new policy implementation. While this is earlier than they would usually need to do so they are then able to delay completing consents and the consequent requirement to make payments.

24. We would also expect to see an increase in outstanding debt to the same or similar levels as prior to the 2019 policy change. Under the previous policy, the council required development contributions due at granting of building consent. Reversing this policy is likely to see outstanding development contributions debt rise back to previous levels, i.e. from around $20 million to around $40 million. While the council cannot withhold the granting of building consent until development contributions are paid most developers paid on time.

25. If we bring forward the payment timing for development contributions required when granting resource consent for subdivision, we are able to prevent the commencement of the consent if development contributions aren't paid. If developers aren't planning to immediately begin their works this leverage is limited. This would trigger an increase in reliance on our compliance teams to ensure this is enforced.

26. We would also expect a change to earlier payment timing to lead to some mismatch between invoicing and receipt of cash. However, as most developers paid at granting of resource or building consent despite our limited leverage, as noted above, we would expect most to pay when invoiced at granting of consent.

Demand for and benefit from infrastructure

27. Some developers may argue that no demand is placed on services delivered from infrastructure until developments are occupied and the infrastructure the council has provided is being used.

28. However, for development to proceed the council needs to provide some infrastructure. It is also lower cost for developers and the council to acquire land in advance of development and to undertake some investment well in advance of development rather than upgrading assets at a later stage.

29. Council is recovering the growth share of the cost of infrastructure investments with development contributions. Some of these investments were made in the past and some will be made in the future. Under the draft Contributions Policy 2021, 20 per cent of the capex we expect to recover is historical and 80 per cent future.

30. The draft Contributions Policy 2021 is set to provide for both current development and development that will occur in the future. At the time future development is liable to pay development contributions some of the presently planned infrastructure investment will have been completed.

31. Much of the requirement the council will face to make infrastructure investments in the future is a result of the cumulative impact of several developments that will take place over the next decade or more.

32. The time between grant of resource consent for subdivision and completion of a project is on average three years and between grant of building consent and completion between one year for stand-alone developments and town houses and two years for apartments. The payment of development contributions at the grant of resource subdivision consent or building consent will precede completion by a considerable time. However, these periods are relatively short in terms of the time period over which infrastructure investment will be made and the growth capacity consumed. Infrastructure investments may provide capacity for growth over decades.

Development impact

33. Bringing forward payment timing will require developers to increase their capital requirements to meet the earlier payments. Development contributions are a small proportion of the average value of house price in Auckland. The average development contributions under the proposed policy is $20,800, 2 per cent of the median Auckland house price which is now over $1 million. Development contributions are a greater proportion of land price and could impact more on development at the subdivision stage. Current

development contributions are 3 per cent of the average Auckland section price of $700,000. Bringing payment timing forward is therefore unlikely to materially impact on the pace and scale of development.

34. Development contributions vary across the region and are higher than the average in some areas. They will be much higher in Drury if the proposal to add infrastructure investments outside the ten years is adopted. However, moving to the development stage will have a longer lead time in Drury. This will provide time for developer's financial plans to be adjusted for the new payment timing.

35. However, it is possible that marginal developments may be affected, as indicated by the reduction in development contributions debt that occurred upon the introduction of the longer payment timings in the 2019 policy. Marginal developers will operate at slim margins and small changes in costs and the progress of development can impact on the viability of their development. The recent liquidation of a major development in Manurewa illustrates this vulnerability. The January 2022 application of the impact of the payment timing change may exacerbate its effect for some marginal developments.

Additional Information:

Local Government Act 2002 development contributions payment triggers

198 Power to require contributions for developments

(1) A territorial authority may require a development contribution to be made to the territorial authority when—

a) a resource consent is granted under the Resource Management Act 1991 for a development within its district:

b) a building consent is granted under the Building Act 2004 for building work situated in its district (whether by the territorial authority or a building consent authority):

c) an authorisation for a service connection is granted.

(4A) If a development contribution policy provides for a development contribution under subsection (1)(b), the territorial authority may require that development contribution to be made when granting a certificate of acceptance under section 98 of the Building Act 2004 if a development contribution would have been required had a building consent been granted for the building work in respect of which the certificate is granted.

208 Powers of territorial authority if development contributions not paid or made

Until a development contribution required in relation to a development has been paid or made under section 198, a territorial authority may,—

(a) in the case of a development contribution required under section 198(1) (a),—

(i) withhold a certificate under section 224(c) of the Resource Management Act 1991:

(ii) prevent the commencement of a resource consent under the Resource Management Act 1991:

(b) in the case of a development contribution required under section 198(1) (b), withhold a code compliance certificate under section 95 of the Building Act 2004:

(ba) in the case of a development contribution required under section 198(4A), withhold a certificate of acceptance under section 99 of the Building Act 2004:

(c) in the case of a development contribution required under section 198(1) (c), withhold a service connection to the development:

(d) in each case, register the development contribution under the Subpart 5 of Part 3 of the Land Transfer Act 2017, as a charge on the title of the land in respect of which the development contribution was required.