INNER WEST COUNCIL VOLUNTARY PLANNING AGREEMENTS POLICY

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INNER WEST COUNCIL

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BACKGROUND TO THE INNER WEST COUNCIL PLANNING AGREEMENTS POLICY

The Inner West Council (IWC) Voluntary Planning Agreements (referred to hereafter as Planning Agreements) Policy has been prepared to provide a framework for the preparation and execution of Planning Agreements pursuant to the provisions of Part 7 of the *Environmental Planning and Assessment* (EP&A) *Act 1979*. The policy sets out the purpose, scope and objectives for the preparation of Planning Agreements and also includes a set of guidelines to assist in the application of the policy to planning and development within the local government area.

The policy forms part of Council's local planning framework including the Community Strategic Plan, Local Environmental Plans and Contribution Plans. At the writing of this policy the NSW Department of Planning and Environment was in the process of reviewing the Voluntary Policy Agreements Policy Framework, and the review results were not yet available. The Department had however identified some key outcomes expected from the Policies. These were namely:

- public benefit from the Voluntary Planning Agreement that relates to the development
- a fair, reasonable and transparent Voluntary Planning Agreement negotiation process
- identifying appropriate infrastructure through an assessment of local community needs.

These key outcomes are addressed in this policy.

PART A. ABOUT THE POLICY

1.0 Purpose

This policy establishes a framework to guide the use of Planning Agreements by Inner West Council, in keeping with the provisions of the *Environmental Planning and Assessment Act 1979* (the Act) and the *Environmental Planning and Assessment Regulation 2000* (the Regulation).

2.0 Scope

This Policy applies to Planning Agreements that the Council might enter into with a land owner or developer who is not a landowner, who requests changes to a Local Environmental Plan either through a Planning Proposal request or a Development Application for land within the Inner West local government area.

3.0 Objectives of policy

The objectives of this policy are to:

3.1 Facilitate flexible and innovative delivery of public infrastructure, facilities, works services and social amenities in line with Council strategic planning objectives for Planning Proposals and/or development proposals;

3.2 Safeguard compensation for loss of or damage to a public amenity, service, resource or asset through replacement, substitution, repair or regeneration and that this is underwritten by proponents to mitigate for risk;

3.3 Ensure that development delivers a net public benefit to the wider community that is of greatest demand in the development area or precinct consistent with any relevant Council policies and priorities and that quality of asset delivery is assured for Council;

3.4 Ensure Planning Agreements capture an agreed proportion of value that is consistent throughout the Local Government Area (LGA) and that consistency is achieved across all council policies where they exist, or any other approach applied by the amalgamated entities to ensure an equitable application of the new Planning Agreements policy;

3.5 Include affordable housing as a constituent part of benefits from potential Planning Agreement contributions;
3.6 Provide a robust set of guidelines or procedures for determining how residual value is captured and applied and to set achievable and robust targets consistent with Council's policies and plans;
3.7 Provide clarity on the negotiation process and how it fits in to the Planning Agreement process from initiation to execution to delivery of negotiated benefits;
3.8 To facilitate dovetailing of the Planning Proposal and/or Development Application processes with the Planning Agreements process to ensure the best possible outcome is achieved for the wider community; and
3.9 Establish a transparent, consistent and accountable system that governs the use of Planning Agreements by Council

4.0 Definitions

The following terminology is used in this policy.

Act means the Environmental Planning and Assessment Act 1979

Council means *Inner West Council*

developer is a person who has sought to change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (section 7.4(11) of the Act), or who has made or proposes to make a Development Application, or who has entered into an agreement with or is otherwise associated with such a person.

Development Application *has the same meaning as in the Act.*

development contribution means the kind of provision made by the developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a *material* public benefit. The term thus includes both section 7.11 (of the Act) and section 7.12 (of the Act) contributions.

Explanatory Note *means a written statement that provides details of the objectives, nature, effect and merits of a Planning Agreement, or an amendment to or revocation of a Planning Agreement.****Net public benefit*** means an overall gain to the public resulting from the consideration of the
effects of both the development proposal and the development contributions under a Planning Agreement.

A ***Planning Agreement*** is a voluntary agreement between the Council and a landowner or developer who seeks an amendment to the planning controls for land or who seeks approval for a proposed development. The developer may be required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose under a Planning Agreement.

A ***planning authority*** *means the Inner West Council.*

planning benefit means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of a particular development on surrounding land or the wider community

planning obligation means an obligation imposed by a Planning Agreement on a developer *requiring* a developer to make a development contribution

Planning Proposal has the same meaning as in the Act.

public *includes* a section of the public

Public amenities or ***public services*** do not include water supply or sewerage services.

public benefit *is* a benefit enjoyed by the public as a consequence of a development contribution. *Development Application* has the same meaning as in the Act.

explanatory note means a written statement that provides details of the objectives, nature, effect and *merits* of a Planning Agreement, or an amendment to or revocation of a Planning Agreement.

public facilities means public infrastructure, facilities, amenities and services

Public Notice *is a notification made to the public advising them of a proposed planning agreement in relation to a Planning Proposal or development application*

Regulation means the *Environmental Planning and Assessment Regulation* 2000

Residual Land Value *is the value of land with development potential*

Special Infrastructure Contributions schedule *is the schedule prepared by Council for development contributions towards infrastructure provision in a special contributions area pursuant to Division 7.1, Subdivision 4 of the Act.*

Uplift Value *is the uplift or increase in land value as a result of the change proposed by a Planning Proposal.*

5.0 Overview of Planning Agreements

Planning Agreements are voluntary agreements). They enable development contributions to be applied to deliver a public benefit. This can be in the form of, but not limited to:

a) public amenities and public services;
b) affordable housing;
c) community facilities; and
d) transport or other infrastructure.

Contributions can be made through:

e) dedication of land to Council;
f) monetary contributions;
g) construction of public infrastructure;
h) provision of materials for public benefit and/or use; or
i) a combination of these.

Planning Agreements cannot be entered into unless public notice has been given and an explanatory note made available for inspection for at least 28 days.

6.0 Planning Agreement Policy principles

The principles for this Planning Agreement policy provide a framework for entering into and administering policies.

The principles are:

6.1 Planning Agreements are used exclusively for planning purposes.
6.2 Planning Agreements are not to restrict Council in the exercise of its functions.
6.3 Individuals or interest groups do not outweigh the public interest when considering Planning Agreements.
6.4 Negotiation of Planning Agreements with developers will be consistent, fair and impartial across the Council area.
6.5 Development Applications or Planning Proposals will be assessed on their own merits without undue weight being given to associated or proposed Planning Agreements.
6.6 The outcomes of Planning Agreements will be aligned with the relevant strategies, plans and studies of Council
6.7 Planning Agreements are to be consistent with the Act, the Regulations and any other applicable law or State Planning Policy requirements

7.0 Who to Contact

The contact for all Planning Agreement queries is Property Department, phone: 93925000, email: council@innerwest.nsw.gov.au

PART B. THE POLICIES

8.0 Scope of Agreements

This policy provides guidance in relation to the scope of Planning Agreements and how they are to be administered.

The scope of Planning Agreements will include (but not be limited to) the following:

8.1 Parties to the Planning Agreement are Council and the landowner. Developers who are not landowners will be considered by Council on the merits of the case.

8.2 Developers who are not landowners that Council agrees to enter into agreement with will also be a party to the Planning Agreement for purposes of consenting to registration of the agreement on the certificate of title and enforcement of the rights granted to Council under the agreement.

8.3 A Planning Agreement can be made in partnership or in other arrangement with another Council for development of land that is not within the Inner West Council area.

8.4 Planning Agreements may be considered that relate to Planning Proposals or Development Applications other than a Planning Proposal or Development Application lodged by a proponent for their land.

8.5 Planning Agreements may be used by Council for purposes of funding any public facilities that compliment Council's contributions plan(s) or Special Infrastructure Contributions schedule where applicable.

9.0 Circumstances in Which Council can Enter into a Planning Agreement

The circumstances in which Council will negotiate and/or enter into a Planning Agreement will include (but not be limited to):

9.1 Where there is any Development Application or Planning Proposal to change the provisions of a Local Environmental Plan.

9.2 Relevance of the Planning Agreement to an application or proposal and whether it should be considered in relation to the Development Application or Planning Proposal.

9.3 That infrastructure works identified in an adopted Developer Contributions Plan will be prioritized and infrastructure not identified in such a plan, but achieves a net public benefit, will be considered.

9.4 That the terms of the letter of offer of the land owner or developer are consistent with the Planning Agreement.

9.5 That the Planning Agreement mitigates or compensates for impact of development.

9.6 That the Planning Agreement meets the requirements of Council's infrastructure works program and the objectives of other Council policies, strategies or plans.

9.7 That benefits provided by a Planning Agreement will be contributing to a net public benefit for the wider community.

10.0 Assessing proposed provisions

Inner West Council is responsible for the assessment of Planning Agreements and may engage the services of independent professionals such as valuers towards that purpose. In terms of assessment of the provisions in a Planning Agreement, the following matters are to be satisfied:

10.1 The value of a Planning Agreement will be determined through a market assessment of the capital appreciation of land value as a result of a proposed Development Application or a Planning Proposal that results in a change to a Local Environmental Plan.

10.2 All Planning Agreements will meet the acceptability test (see the "Acceptability Test contained in Part C, Section 18.0 of this Policy).
10.3 Demand for new public infrastructure or services that is created by the Planning Proposal or Development Application is to be considered and taken into account.
10.4 Independent third parties will be used where necessary to assess provisions of Planning Agreements (see "Probity Guidelines" contained in Part C, Section 22.0 of this Policy).
10.5 The timing of development is to align with the delivery of the public benefit.
10.6 If the costs of any works-in-kind that are to be provided by a developer exceed costs of those works as agreed with Council in a Planning Agreement (excluding a change in scope agreed by Council) that this will not lead to any of the following:
    a. Council agreeing to a Planning Agreement providing for the additional costs to be refunded to the land owner or developer or offset against any development contributions required from the developer; or
    b. The land owner or developer being able to make any further claim against Council for the additional works.
10.7 In a situation where competing applications are accompanied by an offer to enter into a Planning Agreement that provides benefits not wholly unrelated to the development, then Council may consider it appropriate to approve the proposal that offers the greatest planning benefit in terms of both the development and related internal or external benefits.
10.8 Whether past infrastructure provision shortfalls or deficiencies that would otherwise hinder development are being addressed.

11.0 Types of contributions and benefits

Inner West Council's policy on the types of contributions and public benefits that can be negotiated or required in Planning Agreements is explained below. Notwithstanding, Council is not limited to this list of contributions and benefits.

11.1 For consistency, fairness and certainty across the Council area, the value of contributions for a Planning Agreement, will be fixed at 50% of the uplift value due to a Planning Proposal, Local Environmental Plan (LEP) reforms or Development Application.
11.2 Council may request developers, through a Planning Agreement, to make development contributions towards the recurrent costs of public facilities or services. Payment of recurrent costs may be for a limited time.
11.3 Planning Agreements may require funding for infrastructure and works in addition to contributions that would apply under divisions 7.11 and 7.12 of the Act.
11.4 The material contribution offered may be other than dedication of land, or payment of monetary contribution.
11.5 Monies received under the terms of Planning Agreements can be pooled by Council and applied progressively toward infrastructure. Planning Agreements will include a provision setting out such intention.
11.6 Contributions by developers will include funding for reviewing, monitoring and managing of the Planning Agreement process by Council. The Planning Agreements will include a provision setting out such intention.
11.7 Public benefits required or negotiated under a Planning Agreement will include: infrastructural, social, economic, environmental, educational, cultural or other benefits as Council deems beneficial to the public.
11.8 Public benefits required or negotiated under a Planning Agreement will consider areas in the sectors above (in section 10.6) such as (but not limited to) affordable housing, local renewable energy, local reuse and recycling infrastructure, community gardens community art and cultural activities infrastructure.
11.9 Public benefit arising from a Planning Agreement does not necessarily need to be connected to the development itself and can be directed to demand as Council determines.

12.0 Transparency

Transparency in the preparation and execution of Planning Agreements is important for the Council and the community to ensure that Council is working together with the community as expressed in the Community Strategic Plan (CSP). The following matters will facilitate such transparency.

12.1 Information on Planning Agreements, including a register of Planning Agreements and dates they were entered into, will be transparent and accessible to the public (see "Probity Guidelines" contained in Part C, Section 22.0 of this Policy).
12.2 Planning Agreements will not be entered into before the public has been provided with an opportunity to inspect the proposed agreement as specified in the Act (7.4).
12.3 The process from when a Development Application is made or Planning Proposal is lodged to when a Planning Agreement is entered into will be provided by the Council (see "The Planning Agreement Process" contained in Part C, Section 16.0 of this Policy).

13.0 Provision of security

In relation to security, this policy establishes parameters to ensure that Council and the community are covered against damage or loss of community infrastructure or any breach of Planning Agreement by developers. Consequently:

13.1 Planning Agreements will safeguard compensation for loss of or damage to a public amenity, service, resource or asset through replacement, substitution, repair or regeneration and that this is underwritten by developers to mitigate for risk; and
13.2 There will be a provision of a bond or bank guarantee or other suitable means to enforce the Planning Agreement in the event of a breach of the agreement by the landowner or developer (see details in "Administration and Implementation of Planning Agreements" in Part C, Section 20.6 of this Policy)

14.0 Probity

This policy seeks to ensure that there is integrity and accountability in the Planning Agreement system so that fairness and justice is practiced and effective management of any conflicts of interest is undertaken. Consequently, the following matters apply:

14.1 To avoid conflict of interest, the involvement of independent third parties will be instituted if necessary (See "Probity" in Part C, Section 22.1 in this Policy for example circumstances);
14.2 Council staff delegated with responsibility for negotiating a Planning Agreement will not be directly involved in the assessment of development approvals or assessment of the changes to a Local Environmental Plan to which the Planning Agreement relates;
14.3 Councilors will not be involved in the face-to-face negotiations of Planning Agreements; and
14.4 All negotiations by Council with a land owner or developer and their consultants will be documented and will be undertaken at arm's length.

15.0 Administration of Planning Agreements

The administration of Planning Agreements includes an understanding of how the Planning Agreements will be managed during development and once an agreement is entered into. The administration of Planning Agreements will be consistent with the following matters: .

15.1 Council may require that before commencement of development, the Planning Agreement includes a condition that the parties are to enter into an implementation or other agreement as necessary (see "Administration and Implementation" in Part C, Section 20.1 in this Policy, for matters necessitating such side or supplementary agreements);
15.2 Council will monitor and review the progress of Planning Agreements on a regular basis to ensure that developers' planning obligations are met. Each Planning Agreement will set out how this will be achieved;

15.3 Planning Agreements will set out how the developers' obligations under the agreement may be modified or discharged. Circumstances that may lead to modifications are detailed in the "Administration and Implementation" in Part C, Section 20.4 of this Policy;

15.4 Council will generally require Planning Agreements to contain a provision whereby the developer acknowledges that Council will make a notation under S10.7 of the Act about the Planning Agreement on any certificate issued under the Act; and

15.5 Council may require that the developer register the Planning Agreement on the land title. If registration is not possible, the Planning Agreement will be required by Council to place conditions on the developer (refer to "Administration and implementation" in Part C, Section 20.5 of this Policy).

PART C. GUIDELINES/PROCEDURES

This guide has been prepared to aid in understanding Planning Agreements, what needs to be done to enter into a Planning Agreement with Council, and what Council does and considers in entering into such agreements. The guide will be reviewed and amended as found necessary from time to time.

16.0 The Planning Agreement process

The process for putting in place a Planning Agreement involves the following:

a) Preliminary discussions by a developer[1] regarding potential Planning Agreement offers before submission of a Planning Proposal or Development Application
b) Submission of a Planning Proposal or Development Application by a developer;
c) Council meeting with the developer to discuss the proposal and establish the land value;
d) Creation of a draft Planning Agreement document in liaison and in negotiation with the developer;
e) Consultation with relevant internal stakeholders in Council before putting the approved draft Planning Agreement on public exhibition;
f) Final approval of the Planning Agreement following public exhibition;
g) Signing and execution of Planning Agreement by the parties (before Council resolves to forward the related Planning Proposal to the Minister for finalization pursuant to Section 3.36 of the Act); and
h) Recording the agreement in Council's Master Planning Agreement Register.

This process occurs in parallel with the associated Planning Proposal process where applicable, and is shown in figure 1 overleaf.

[1] The provisions applying to developers apply equally to landowners seeking to enter into a Planning Agreement with Council.

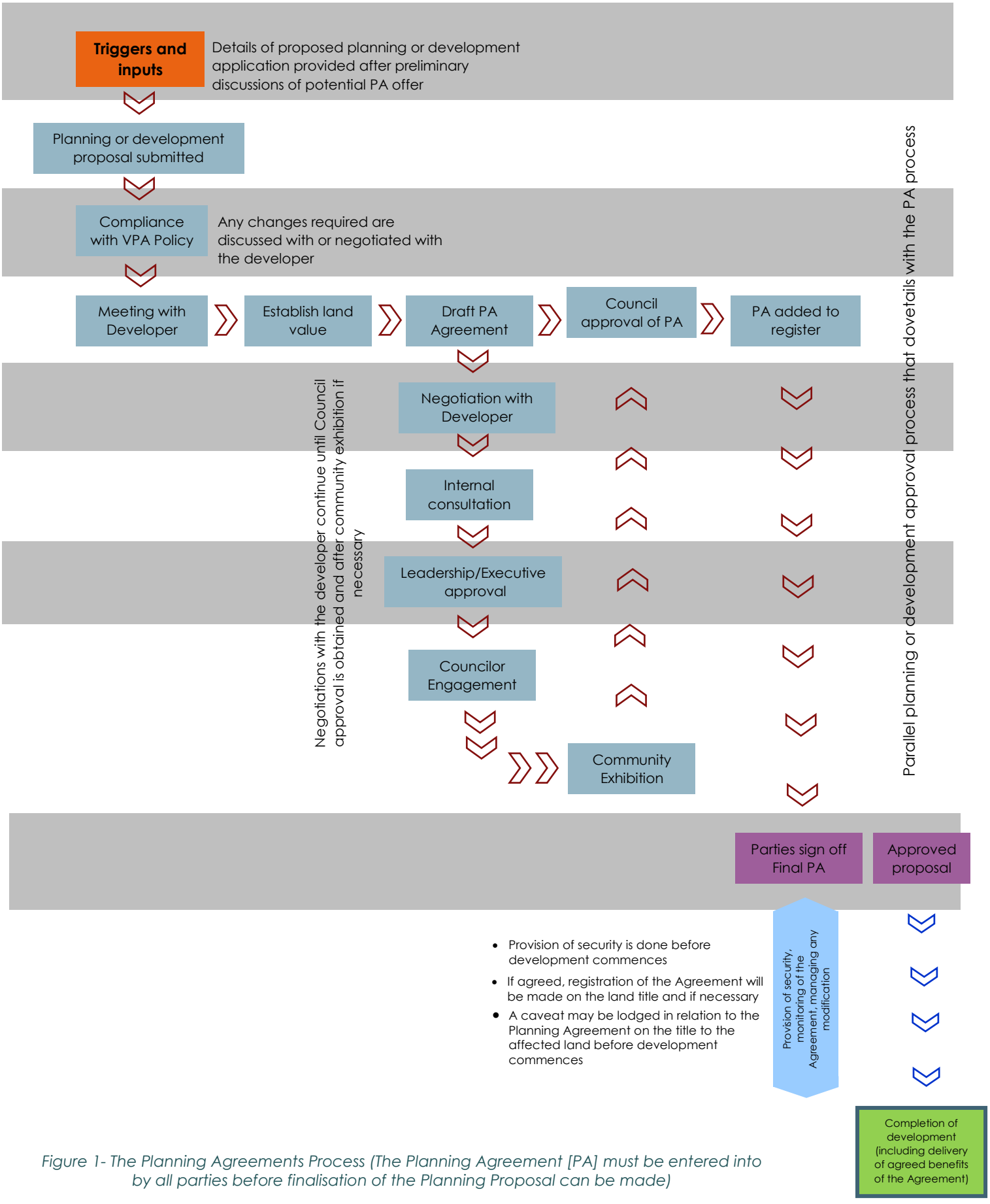


Figure 1- The Planning Agreements Process (The Planning Agreement [PA] must be entered into by all parties before finalisation of the Planning Proposal can be made)

The detailed steps in negotiating a Planning Agreement with a developer are set out in Section 17.0 of this Part.

17.0 Negotiation process

Procedures and schedules for the negotiation will be agreed upon. Parties may if necessary, appoint a person or persons to represent them in the negotiations or appoint third parties. Negotiation with a developer from initiation to implementation will be documented. Among other things documented, it is to reflect the outcomes of the matters considered under section 17.1

17.1 Considerations in the negotiations will include:

a) Other parties that may need to be involved and are agreed to by the parties
a) The infrastructure that is to be provided both on and/or off the site.
c) The payments and their timing.
d) Infrastructure to be provided and the timing of provision.
e) Land to be dedicated and the timing of dedication.
f) Whether contributions or levies are to still to be paid, and what amounts and for what infrastructure and when.
g) How payment is to be made for the preparation of the draft Planning Agreement and the explanatory note and other costs.
h) Whether the Planning Agreement is to be registered on the land title.
i) Whether bank guarantees are required for security.
j) Whether the Planning Agreement is to be registered on the land title of the development site in accordance with Section 7.6 of the Act.

If a draft Planning Agreement is negotiated, it is documented as a draft Planning Agreement and the parties agree on the draft Planning Agreement. The parties also agree on the content of the application to which the draft agreement relates.

17.2 Steps in the negotiations:

Step 1. Before an application is made, sufficient detail of the proposed Development Application or Planning Proposal must be provided. Although this might not include the final design detail, such matters as: the proposed height; the floor space for proposed uses; the number and sizes of dwellings; the car spaces proposed; open space to be provided; public facilities and services proposed; and other information that clearly delineates the project must be provided.

Step 2. The developer makes the application to Council, that includes the draft Planning Agreement and the developer's offer to enter into that agreement if the application is approved. In the case of an application to change an environmental planning instrument (LEP), the application must include the developer's offer to enter into the Planning Agreement if the change to the instrument occurs or where relevant, consent is subsequently granted to a Development Application relating to the change to the instrument.

Step 3. Compliance with the Council's Planning Agreement Policy is reviewed by Council, and preliminary investigation of any mitigation measures required to address the impact of the development proposal is also undertaken and the developer is engaged to address or negotiate changes required.

Step 4. The infrastructure required for the development proposal is broadly investigated and the land value uplift is established, and contributions or levies are calculated.

Step 5. Relevant public authorities, other stakeholders and the Council leadership team (comprising of members from the Council Executive as determined from time to time) are consulted in relation to the application and the draft Planning Agreement and any consequential amendments required to the application, draft agreement and explanatory note are made in consultation with the developer before approval by the Council leadership team.

Step 6. The application, draft Planning Agreement and explanatory note are publicly notified and exhibited in accordance with the Act and Regulation for a minimum period of 28 days. Any consequential amendments required to the application and draft agreement are made and, if necessary, the amended application, draft Planning Agreement and explanatory note are re- exhibited. Any amendment to the draft Planning Agreement requires amendment of the application to reflect the developer's offer to enter into the amended draft Planning Agreement.

18.0 How Council Assesses Provisions

This Guideline provides details on how the Council assesses provisions of Planning Agreements.

18.1 Acceptability Test

Council determines whether a Planning Agreement meets the Acceptability Test by considering whether the agreement:

a) is directed towards proper or legitimate planning purposes. The statutory planning controls and other adopted planning policies applying to a development will generally assist in ascertaining this; and
b) ordinarily provides for public benefits that bear a relationship to development that is not *de minimus* or in other words, not wholly unrelated to the development; and
c) produces outcomes that meet the general values and expectations of the public and protect the overall public interest; and
d) provides for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits sought by Council; and
e) protects the wider community against harm resulting from inappropriate impacts of development that is not supported by commensurate levels of local infrastructure.

19.0 Valuation of Land Value Uplift and Benefits

It may be necessary for purposes of assessing land value uplift, material public benefit or land dedication, for Council to seek the services of independent valuation. All independent consultants employed must have qualifications accepted by Council.

19.1 Valuation of Land Value Uplift

Land value uplift as a result of a planning proposal will be valued to determine the uplift in value. The method of calculation will be based on identifying and agreeing on what the residual land value (RLV[a]) for the land under consideration is. Council will either have the residual land value (RLV[a]) of the land already assigned, or will procure the services of a registered independent land valuer acceptable to both parties to determine the residual land value.

Council or a registered land valuer will then value the expected residual land value (RLV[b]) as a result of the proposed change arising from a planning proposal. The uplift in value (RLV[b] – RLV[a]) will be used to determine the value of contributions for Planning Agreements. All contributions are valued at 50% of the uplift value of land and therefore the contributions will be calculated as:
50% of (RLV[b] – RLV[a]).

19.2 Valuation of contributions as a Result of a Development Application

Valuation of contributions (under Division 7.1 of the Act) arising from a development application which effectively seeks an increase in floor space will be based on the difference between the maximum allowable floor space (Base FS) which exists for the Site under the current LEP (without any additions or amendments from the Standard Instrument provisions) and the total floor space being sought (New FS).

If the contributions for the maximum allowable floor space development is the Base Contribution (BC) the value of the contribution due to increase of floor space will be the

Base contribution (BC) per unit floor space multiplied by the additional floor space (New FS-Base FS). That is (BS/Base FS)*(New FS – Base FS).

19.3 Valuation of Benefits

Carrying out of works for a public purpose will generally require Council to value the benefit of the completed works on the basis of a cost estimate prepared by Council or a consultant on behalf of Council.

For valuation of land where required, Council or a qualified independent registered valuer that is acceptable to the parties will provide the valuation. In the case of uplift in value from increased material development, the increase in value will be determined on the basis of a cost estimate of the increased material development from Council or an independent registered Quantity Surveyor that is acceptable to both parties.

20.0 Administration and Implementation of Agreement

The administration of a Planning Agreement and its implementation will involve various stakeholders including various sections of the Council.

20.1 Entering into a Planning Agreement

a) A Planning Agreement is entered into when it is signed and dated by all parties to the agreement.
b) Parties to a Planning Agreement are the Council and the owner or developer of the land. If the developer is not the land owner, Council will consider the matter on its own merit.
c) If the developer is not the land owner and becomes one of the parties to the Planning Agreement, the land owner must still be a party to the Planning Agreement for purposes of consenting to registration of the Planning Agreement on the certificate of title to the land and all enforcement rights granted to Council under the Planning Agreement.
d) A side (supplementary) agreement may be entered into before the commencement of development, subject to the development, for matters such as (but not limited to the following):
    i. Design and technical specifications or standards of works required by the Planning Agreement to be undertaken by the developer;
    ii. Terms of provision of land by the developer to Council;
    iii. How completed work is to be handed over to Council;

20.2 Costs of Entering into a Planning Agreement

a) Costs of preparing, negotiating, executing and monitoring the terms of a Planning Agreement together with the cost of employing independent consultants and/or independent third parties, are all costs associated with entering into a planninig agreement and are therefore part of that Agreement.
b) Generally, Council requires all reasonable costs in this regard be met by the developer, however circumstances may vary and allow costs to be the subject of negotiation.

20.3 Monitoring of a Planning Agreement

a) Council will routinely monitor (every quarter with more stringent frequency for high risk development) the performance of the developer's obligations under a Planning Agreement and report them in accordance with the Act.
b) Council may require the developer (at the developer's cost), to report periodically to Council on their compliance with obligations under the Planning Agreement.
c) The Planning Agreement will contain a provision that allows for a periodic review(s) with all parties involved in the agreement relating to the delivery of the developer's obligations to Council.

20.4 Modifications to a Planning Agreement

Council may agree to the modification or discharge of a developer's obligations under a Planning Agreement in the following circumstances including (but not limited to):

a) The developer's obligations have been fully completed in accordance with the agreement; or
b) There has been a material change to the planning controls for the land to which the agreement relates; or
c) There has been a material modification to the development consent to which the agreement relates; or
d) The development consent to which the agreement relates has lapsed; or
e) The development consent to which the agreement relates has been revoked; or
f) Other material changes in the overall planning circumstances of an area affecting the operation of the Planning Agreement have arisen; or
g) The developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms; or
h) Council and the developer otherwise agree to the modification or discharge of the agreement.

20.5 Registration of a Planning Agreement

Registration of a Planning Agreement on the title to a developer's land may be required where a Planning Agreement has been entered into by both parties.

a) Before registration of the Planning Agreement on the title, Council may require the lodgment of a caveat on the title to the affected land.
b) Council will require, consent for registration of the Planning Agreement on the land title from the land owner and a caveat, or procurement of consent of prior registered interests.

20.6 Provision of Security

Where the security provided by a developer is agreed to be a bank guarantee, it will be an unconditional bank guarantee from a major Australian Bank in favour of Council to the full value of the developer's obligations under the Agreement and on terms otherwise acceptable to Council. The procedure for providing a bank guarantee will be as follows:

a) The full contribution amount due or outstanding at any time under a Planning Agreement plus interest and charges associated with establishing or operating a bank guarantee shall be supported by a bank guarantee from a major Australian bank. The bank guarantee must comply with the following:
    i. It is unconditional and includes an amount calculated by Council for the cost of monitoring and reviewing the developer's performance under a planning agreement.
    ii. It must be able to be drawn on by Council at any time that monetary contributions, land dedications or the provision of a material public benefit fail to be provided or completed as agreed under the terms of the Planning Agreement.
    iii. It must be able to be drawn on by Council unconditionally in accordance with the terms of the Planning Agreement.
b) The bank guarantee will be discharged when all commitments by the developer and/or land owner under the terms of a Planning Agreement have been met.
c) The bank guarantee must be such that all bank charges and other costs of setting up and maintaining it are met by the developer.

21.0 Dispute resolutions

21.1 Dispute Resolutions.

Planning Agreements will be required to make provision for appropriate dispute resolution processes. As Planning Agreements may differ in content, there is no one particular dispute

resolution process that will be appropriate in all case. Options that may be considered however include:

a) Direct negotiation between senior representatives of the parties;
b) Mediation; and
c) Expert determination.

Litigation is usually seen as a last resort option and, accordingly, Council is likely to require other appropriate forms of dispute resolution to have been exhausted before litigation may be taken.

22.0 Probity Guidelines

22.1 Use of Independent third parties.

Independent third parties will be used when it is necessary. Circumstances that may require use of third parties include:

a) Where an independent planning assessment of a proposed change to an environmental planning instrument or Development Application is considered desirable or necessary;
b) Where factual information is necessary in the course of negotiations such as in obtaining independent costings for valuations;
c) Where dispute resolution is required under a Planning Agreement;
d) Where sensitive financial or other confidential information might need to be established or verified during the course of negotiations;
e) In order to facilitate complex negotiations where numerous parties are stakeholders or large projects are involved; and
f) In order to ensure transparency, objectivity and accountability in the Planning Agreement processes.

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22.2 Access to Planning Agreements

a) Council will keep a register of Planning Agreements applying to land within the Council's areas, whether the Council is party or not to a Planning Agreement. The Council will record in the register the date a Planning Agreement was entered into and a short description of the agreement, including any amendment.
b) The register will include the following information:
    i) a short description of any Planning Agreement and any amendment;
    ii) the date the agreement was entered into;
    iii) the names of the parties to the agreement;
    iv) the land to which it applies;
    v) any breaches and/or revocation of the Planning Agreement and reasons; and
    vi) the date on which the Planning Agreement requirements were completed.
c) The Council will make the following available for public inspection during ordinary office hours:
    i) this Policy;
    ii) the Planning Agreements register kept by the Council;
    iii) copies of all Planning Agreements (including amendments) that apply to the area of the Council; and
    iv) copies of the Explanatory Notes relating to those agreements or amendments.
d) Council will also make the Planning Agreement register available to the public on its website.
e) Council must include in its annual report, the particulars of compliance with, and the effect of any Planning Agreements (during the year to which the report relates) whilst such agreements remain in force.