

Voluntary Planning Agreements Policy

V2



Title	Voluntary Planning Agreements Policy
Summary	This policy establishes a framework to guide the use of Planning Agreements by Inner West Council, in keeping with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> (the Act) and the <i>Environmental Planning and Assessment Regulation 2021</i> (the Regulation).
Document Type	Policy
Relevant Strategic Plan Objective	<ul style="list-style-type: none"> • Strategic Direction 1: An ecologically sustainable Inner West • Strategic Direction 2: Liveable, connected neighbourhoods and transport • Strategic Direction 3: Creative communities and a strong economy • Strategic Direction 4: Healthy, resilient and caring communities • Strategic Direction 5: Progressive responsive and effective civic leadership
Legislative Reference	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Environmental Planning and Assessment Regulation 2021</i> • Planning Agreements Practice Note – February 2021 • <i>Independent Commission Against Corruption Act 1988</i>
Related Council Documents	<ul style="list-style-type: none"> • Model Code of Conduct • Local Strategic Planning Statement • Local Environmental Plan and Development Control Plan Local Infrastructure Contribution Plan • Local Housing Study and Strategy • Integrated Transport Strategy • Affordable Housing Policy
Version Control	See last page

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1 Purpose

The purpose of this policy is to establish a framework, policies and procedures which Inner West Council (**the Council**) will apply to guide the use of Planning Agreements by Council, in keeping with the provisions of the *Environmental Planning and Assessment Act 1979* (**the Act**), the *Environmental Planning and Assessment Regulation 2021* (**the Regulation**) and the Planning Agreements Practice Note – February 2021 (**the Practice Note**, published by the then Department of Planning, Industry and Environment).

Council is required to consider the Practice Note when negotiating a Planning Agreement.

2 Scope

This policy applies to Planning Agreements that the Council might enter into with a person who requests changes to an environmental planning instrument or has made or proposes to make a development application or application for a complying development certificate, within the Inner West local government area (**the Developer**). The person may or may not be the landowner, and a Planning Agreement can be entered into with a person who has an arrangement with the Developer.

It is expected that Planning Agreements would normally be associated with development that is out-of-sequence or not contemplated by Council's Local Strategic Planning Statement to support infrastructure delivery and provide for public benefits that have some relationship to the development

3 Background

The Inner West Council (**IWC**) Voluntary Planning Agreements Policy (**Policy**) has been prepared to provide a framework for the preparation and execution of voluntary planning agreements (**Planning Agreements**) pursuant to the provisions of Part 7 of the *Environmental Planning and Assessment Act 1979* (**the Act**). 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 which includes its Community Strategic Plan, Local Strategic Planning Statement, Local Environmental Plan, Development Control Plan and Contributions Plans.

This Policy has been prepared having regard to the Planning Agreements Practice Note – February 2021 published by the then Department of Planning, Industry and Environment (**Practice Note**).

4 Definitions

In the Voluntary Planning Agreements Policy, the following terms have the following meanings:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> .
Contributions Plan	means a contributions plan within the meaning of the Act pursuant to which contributions can be required to be made under s7.11 or s7.12 of the Act.
Council Committee	means a group of internal stakeholders from relevant divisions of Council and includes a member of the Local Infrastructure Contributions Steering Committee.
Council Officer	Inner West Council members of staff (including full-time, part-time, casual, and contracted staff).
Councillor	Inner West Council elected representative
Developer	is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (s7.4(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 a Developer under a Planning Agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit, to be used for or applied towards a public purpose.
Explanatory Note	means the written statement that is required to be exhibited with a Planning Agreement under clause 203 of the Regulation and that provides details of the objectives, nature, effect and merits of a Planning Agreement, or an amendment to or revocation of a Planning Agreement.
Instrument Change	means a change to an environmental planning instrument.
Land Value Uplift	is the uplift or increase in land value as a result of an Instrument Change.

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.
Planning Agreement	is a voluntary planning agreement within the meaning of s7.4(1) of the Act.
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.
Policy	means this Policy.
Practice Note	means the document titled ' <i>Planning Agreements – Practice Note – February 2021</i> ' published by the then NSW Department of Planning, Industry and Environment.
public	includes a section of the public.
Public amenities or public services	do not include water supply or sewerage services.
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 an Instrument Change or Development Application.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> .
Residual Land Value	<i>is the value of land with development potential.</i>

5 Statement

The objectives of this Policy are to:

- 5.1 Facilitate flexible and innovative delivery of public infrastructure, facilities, works, services and social amenities in line with Council's strategic planning objectives for Planning Proposals and/or development proposals;
- 5.2 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 the Developer to mitigate for risk;
- 5.3 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;
- 5.4 Ensure consistency is achieved in valuing benefits under Planning Agreements across the local government area (LGA);
- 5.5 Provide a robust set of guidelines or procedures for valuing public benefits under Planning Agreements;
- 5.6 Include affordable housing as a constituent part of public benefits from potential Planning Agreement contributions;
- 5.7 Provide a flexible means of achieving tailored development outcomes and focused public benefits, including agreement by communities to the redistribution of costs and benefits of development;
- 5.8 Secure off-site public benefits for the community so that development delivers a Net public benefit;
- 5.9 Provide clarity on the negotiation process and how it fits into the Planning Agreement process from initiation to execution to delivery of negotiated public benefits;
- 5.10 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
- 5.11 Establish a transparent, consistent and accountable system that governs the use of Planning Agreements by Council.

6 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;
- d) public open space; and
- e) transport or other infrastructure.

Development Contributions can be:

- a) dedication of land to Council;
- b) monetary contributions;
- c) construction of public infrastructure;
- d) provision of material public benefits; or
- e) 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.

7 Planning Agreement Policy principles

The principles for this Policy provide a framework for when Council will enter into Planning Agreements and how Planning Agreements relate to Council's other strategic planning documents.

The principles also ensure transparency, fairness and flexibility in planning decisions.

The principles are consistent with Part 2.1 of the Practice Note.

The principles are:

- 7.1 Planning Agreements are used exclusively for planning purposes.
- 7.2 Planning Agreements will be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand, and strategic planning will ensure development is supported by infrastructure needs for a growing population.
- 7.3 Planning Agreements are not to restrict Council in the exercise of its functions and its planning decisions.
- 7.4 Council cannot refuse to grant development consent on grounds that a Planning Agreement has not been entered into or a Developer has not offered to enter into a Planning Agreement.

- 7.5 Individuals or interest groups do not outweigh the public interest when considering Planning Agreements.
- 7.6 Negotiation of Planning Agreements with Developers will be consistent, fair and impartial across the Council area.
- 7.7 Development Applications or Planning Proposals will be assessed on their own merits without undue weight being given to any related Planning Agreements.
- 7.8 The outcomes of Planning Agreements will be aligned with the relevant strategies, plans and studies of Council.
- 7.9 Planning Agreements will not be used as a means of general revenue raising or to overcome revenue shortfalls.
- 7.10 Planning Agreements will not require public benefits which are wholly unrelated to the particular development to which the Planning Agreement relates.
- 7.11 Planning Agreements are to be consistent with the Act, the Regulation, the Practice Note and any other applicable law.
- 7.12 It is appropriate to consider the partial or full waiver of s7.11 or s7.12 of the Act by Planning Agreements where:
 - a) A Developer wants to provide infrastructure in addition to, or at a higher standard than what has been specified under the Contributions Plan.
 - b) A Developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of infrastructure.
 - c) A different and better or more innovative outcome can be negotiated, than can be achieved through imposing contributions pursuant to s7.11 or s7.12 of the Act.
- 7.13 Planning Agreements are an appropriate mechanism to be considered where a Developer is seeking to provide infrastructure that is beyond the scope of what is permitted in the applicable Contributions Plan.
- 7.14 Planning Agreements entered into by Council will not exclude contributions payable under Subdivision 4 of Division 7.1 of the Act unless the Minister administering the Act agrees and is also a party to the Planning Agreement.

8 Who to Contact

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

PART B. THE POLICIES

9 Scope of Agreements

This Policy sets out the scope of Planning Agreements and how they will be administered.

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

- 9.1 Parties to the Planning Agreement are Council and the Developer.
- 9.2 Where the Developer is not the owner of the land on which the relevant development is to be carried out, Council will require the landowner to also be a party to the Planning Agreement. This will be required even if no land is dedicated under the Planning Agreement, in order for the landowner to consent to registration of the Planning Agreement and facilitate enforcement of the Planning Agreement.
- 9.3 A Planning Agreement can be made in partnership or through other arrangements with another public authority or agency for development of land that is not within the Inner West Council area.
- 9.4 Planning Agreements may be considered that relate to Instrument Changes or Development Applications lodged by a person who is not the Developer but who has an arrangement with the Developer.
- 9.5 Planning Agreements may be used by Council for purposes of funding any public infrastructure, amenities and services that complement Council's Contributions Plan(s) where they are not wholly unrelated to the particular development.

10 Circumstances in which Council can Enter into a Planning Agreement

Council will only negotiate and enter into a Planning Agreement where:

- 10.1 a Development Application or application for a Complying Development Certificate (CDC) has been or is proposed to be made, or there is a proposed Instrument Change; and
- 10.2 The Developer or person proposing the Planning Agreement has submitted a letter of offer and the Planning Agreement is consistent with the offer, either as originally made, or as updated from time to time.

Council may negotiate and enter into a Planning Agreement in the following circumstances (without limitation):

- 10.3 Where the infrastructure works proposed in the Planning Agreement are identified in an adopted Contributions Plan or if not identified in such a plan, achieve a Net public benefit; or
- 10.4 Where the Planning Agreement mitigates or compensates for the impacts of the development to which it relates; or
- 10.5 Where the Planning Agreement meets the requirements of Council's infrastructure works program and the objectives of other Council policies, strategies or plans or State Government's district and regional strategic plans and policies.

11 Assessing proposed provisions of a Planning Agreement

Inner West Council is responsible for the assessment of Planning Agreements it is asked to enter into 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:

- 11.1 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 Instrument Change as further set out in Part C, Section 19.0 of this Policy.
- 11.2 All Planning Agreements will meet the acceptability test (see the “Acceptability Test contained in Part C, Section 18 of this Policy”).
- 11.3 Demand for new public infrastructure or services that is created by an Instrument Change or Development Application is to be considered and taken into account.
- 11.4 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).
- 11.5 The timing of development is to align with the delivery of the public benefit.
- 11.6 If the actual costs of any works that are to be provided by a Developer under a Planning Agreement exceed the agreed costs of those works set out in the Planning Agreement (excluding a change in scope agreed by Council) Council will not agree to reimburse those additional costs and the Developer will have no further claim for those costs. The Developer will also not be able to reduce the scope of the works.
- 11.7 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 Net public benefit in terms of both the development and related internal or external benefits.
- 11.8 Whether past infrastructure provision shortfalls or deficiencies that would otherwise hinder development are being addressed.

12 Types of contributions and benefits

Inner West Council's policy on the types of Development 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 Development Contributions and benefits.

- 12.1 Planning Agreements may require Development Contributions towards the recurrent costs of public facilities or services that primarily serve the development to which the Planning Agreement applies or neighbouring development in perpetuity. Payment of recurrent costs may be for a limited time until a public revenue stream is established to support the on-going costs of the facility/ service.
- 12.2 Planning Agreements may require funding for infrastructure and works in addition to contributions that would apply under s7.11 and s7.12 of the Act.
- 12.3 Development Contributions may be money, or the dedication of land, or other material public benefit.
- 12.4 Development 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.
- 12.5 Public benefits required or negotiated under a Planning Agreement will include: infrastructure, social, economic, environmental, educational, cultural or other benefits as Council deems beneficial to the public.
- 12.6 Development Contributions required or negotiated under a Planning Agreement to deliver the public benefits noted in clause 12.5 may include (but are not limited to) affordable housing, open space, public domain improvements, active transport infrastructure, local renewable energy, local reuse and recycling infrastructure, community gardens, community art and cultural activities infrastructure.
- 12.7 Council encourages Developers to achieve 6-star energy ratings (Green Star) in commercial, industrial, residential and employment buildings and to exceed Green Star energy and water requirements in residential buildings to reduce the impact of buildings on climate change and will consider including such commitments in Planning Agreements.
- 12.8 Council encourages the use of Planning Agreements to deliver additional open space to the community.
- 12.9 Public benefit arising from a Planning Agreement does not necessarily need to be connected to the development itself but should not be wholly unrelated to the development.

13 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.

- 13.1 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).
- 13.2 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 (s7.4).
- 13.3 The process from when a Development Application is made or Planning Proposal or other proposal for an Instrument Change is lodged to when a Planning Agreement is entered into will be provided by the Council (see “The Planning Agreement and Negotiation Process” contained in Part C, Section 16 of this Policy).

14 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 Agreements by Developers. Consequently:

- 14.1 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 this is to be underwritten by Developers to mitigate for risk;
- 14.2 Planning Agreements will contain provisions requiring a bond or bank guarantee or other suitable means to enforce the Planning Agreement in the event of a breach of the Planning Agreement by the landowner or Developer, and the value of the security will relate to the potential costs that may be incurred by Council in carrying out the relevant works obligations of the Developer in the event of a default by the Developer (see details in “Administration and Implementation of Planning Agreements” in Part C, Section 20 of this Policy);
- 14.3 All Planning Agreements will be registered, and Council will require written agreement to registration from each person with an estate or interest in the land to which the planning agreement applies as a precondition to the execution of the Planning agreement;
- 14.4 Development Contributions will be required to be made before the issue of construction certificates, subdivision works certificates, subdivision certificates or occupation certificates within the meaning of the Act; and,
- 14.5 Planning Agreements which involve the dedication of land free of cost will provide for the acquisition of the land for \$1 by Council in the event that the Developer or landowner does not dedicate the land when required.

15 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:

- 15.1 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);
- 15.2 Council staff delegated with responsibility for negotiating a Planning Agreement will not be directly involved in the assessment of Development

Applications or Planning Proposals, to which the Planning Agreement relates or any related site specific development control plans;

15.3 Councillors will not be involved in the negotiation of Planning Agreements; and

15.4 All negotiations by Council with a landowner or Developer and their consultants will be documented and will be undertaken at arm's length.

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:

15.5 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 contain provisions requiring regular reporting to Council of matters to enable the Council to meet its reporting obligations under the Regulation and a mechanism for periodic review;

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

15.7 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 s10.7 of the Act; and

15.8 Council will require that the Developer register the Planning Agreement on the land title. (refer to "Administration and implementation" in Part C, Section 20 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 The Planning Agreement Offer and Negotiation Process

The process for negotiating and entering into a Planning Agreement involves the following:

- a) Preliminary discussions between Council officers and a Developer¹ regarding a potential Planning Agreement offer are to occur before the Developer submits a Planning Proposal or Development Application. The parties are to consider:
 - i) other authorities or persons who should be additional parties to the Planning Agreement;
 - ii) the infrastructure required for the development proposal;
 - iii) the land value uplift; and
 - iv) level and value of contributions.
- b) Developer's should use pre DA meetings, preplanning application process, and Council's development advisory services to formulate an offer;
- c) Council officers meeting with the Developer to discuss the proposal;
- d) Submission of a letter of offer (**offer**) to enter into a Planning Agreement. A template letter of offer is attached to this Policy. Letters of offer should be made as early as possible in the process;
- e) Consultation with relevant internal stakeholders in Council and external stakeholders and consideration by Council Officers of the merits of the Planning Agreement against the criteria set out in this Policy (including the "Acceptability Test" in Part C, Section 18 of this Policy) 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;
- f) Council will instruct its lawyers to prepare the first draft of the Planning Agreement document based on Council's template Planning Agreement and the Developer's letter of offer. The draft Planning Agreement will be developed in negotiation with the Developer;
- g) Submission of a Planning Proposal or Development Application by the Developer together with a version of the Planning Agreement signed by the Developer and landowner;
- h) The draft Planning Agreement will be reported to a Council Committee and then to Council's leadership team and then the governing body of Council for a decision on whether to progress to public exhibition of the draft Planning Agreement;
- i) Consultation with relevant external stakeholders and public exhibition of the Planning Agreement and Explanatory Note in accordance with the Regulation

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

- for a minimum period of 28 days and together with the Development Application or Planning Proposal;
- j) Council's authorized delegate considers whether to enter into the Planning Agreement after considering the result of stakeholder consultation and public exhibition;
 - k) Any amendments required to the draft Planning Agreement are made and, if necessary, the amended draft Planning Agreement and Explanatory Note are re-exhibited;
 - l) If Council determines to enter into the Planning Agreement, execution of the Planning Agreement by the Council (before Council resolves to forward any related Planning Proposal to the Minister for finalization pursuant to s3.34 of the Act or to grant any development consent); and
 - m) Recording the agreement in Council's Master Planning Agreement Register.

17 Detailed Considerations for Negotiation

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 this section.

Considerations in the negotiations, guided by this Policy will include:

- a) Other parties that may need to be involved and are agreed to by the parties.
- b) The infrastructure that is to be provided both on and/or off the development site.
- c) The timing of the provision of any Development Contributions.
- d) Whether contributions or levies under s7.11 and s7.12 of the Act are to still to be paid, and if so whether benefits under the Planning Agreement are to be considered when determining the amount of the contribution or levy. How payment is to be made for the preparation of the draft Planning Agreement and the explanatory note and other costs.
- e) The bank guarantees required for security.
- f) Registration of the Planning Agreement on the land title of the development site in accordance with s7.6 of the Act.

18 The Acceptability Test

This Policy 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 Planning Agreement:

- a) is directed towards legitimate planning purposes. The statutory planning controls and other adopted planning policies applying to a development will generally assist in ascertaining this; and
- b) provides for public benefits that bear a relationship to development that is not de minimis 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
- d) protects the overall public interest; and
- e) provides for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits sought by Council; and
- f) protects the wider community against harm resulting from inappropriate impacts of development that is not supported by commensurate levels of local infrastructure.

19 Valuation of Land Value Uplift and Development Contributions

The primary purpose of the Policy is enabling the timely delivery of strategically planned infrastructure works to support growing communities, or the associated financing of infrastructure needs, that have been identified within Council's LGA by its suite of community strategic plans and strategic land use plans.

One way of achieving that primary purpose and valuing Development Contributions under Planning Agreements across the LGA in an equitable way is to assess the Land Value Uplift and determine the appropriate amount of Development Contributions as a percentage of that Land Value Uplift.

It may be necessary for purposes of assessing Land Value Uplift or the value of material public benefits or land dedication, for Council to seek the services of an appropriately qualified land valuer or quantity surveyor acceptable to Council.

19.1 Determination of Land Value Uplift and Development Contribution 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 an Instrument Change. The Land Value Uplift value (RLV[b] – RLV[a]) will be used to determine

the value of contributions for any Planning Agreements entered into in connection with an Instrument Change.

Development Contributions under Planning Agreements in connection with Instrument Changes will be valued at 50% of the Land Value Uplift and will therefore be determined using the following formula:

50% of (RLV[b] – RLV[a]).

19.2 Valuation of Development Contributions as a Result of a Development Application

Valuation of Development Contributions under a Planning Agreement in connection with 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 land 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 $(BC/ \text{Base FS}) * (\text{New FS} - \text{Base FS})$.

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 suitably qualified expert 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 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 Developer, and if the Developer is not the owner of the land, the landowner.
- c) A Planning Agreement should include 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; and
 - iii. How completed work is to be handed over to Council.

20.2 Council's Costs of Entering into a Planning Agreement

- a) Council's 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 Planning Agreement.
- b) Generally, Council requires all reasonable costs in this regard be met by the Developer,

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 Planning Agreement relating to the delivery of the Developer's obligations to Council.

20.4 Modification or Discharge of Developer's Obligations to a Planning Agreement

Council may agree to the 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 Planning Agreement; or
- b) The development consent to which the Planning Agreement relates has lapsed; or

- c) The development consent to which the Planning Agreement relates has been revoked; or
- d) The developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms.

Council may negotiate a modification to a Developer's obligations under a Planning Agreement where:

- e) There has been a material change to the planning controls for the land to which the Planning Agreement relates; or
- f) There has been a material modification to the development consent to which the Planning Agreement relates.

20.5 Provision of Security

Bank guarantees will be unconditional bank guarantees 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 obligations secured by the bank guarantee should be the carrying out of all development contributions comprising works and a further amount to cover Council's costs of enforcing compliance with other obligations.

The procedure for providing a bank guarantee will be as follows:

- a) The bank guarantee must be provided on execution of the Planning Agreement.
- b) It must be able to be drawn on by Council at any time to remedy a breach of the Planning Agreement secured by the bank guarantee.
- c) The bank guarantee will be discharged when all commitments by the Developer and/or landowner under the terms of a Planning Agreement have been met.
- d) The bank guarantee must be such that all bank charges and other costs of setting up and maintaining it are met by the Developer.

20.6 GST

Pursuant to Division 81 & 82 of the *A New Tax System (Goods and Services Tax) Act 1999* and Regulation 81 of the *A New Tax System (Goods and Services Tax) Regulations 1999* Development Contributions under a Planning Agreement are usually GST exempt.

21 Dispute resolution

21.1 Dispute Resolution.

Planning Agreements will be required to provide for dispute resolution to follow the following process:

- a) Direct negotiation between senior representatives of the parties, and if that is unsuccessful;
- b) Mediation; and
- c) Expert determination in appropriate circumstances.

Litigation is usually seen as a last resort option and, accordingly, Council will require the above dispute resolution process to have been exhausted before litigation may be taken.

22 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 Instrument Change or Development Application, or any associated DCP proposed by the Developer 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 mediation or expert determination is required for dispute resolution 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.

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 Planning Agreement, including any amendment. The register will include the following information:
 - i) a short description of any Planning Agreement and any amendment;
 - ii) the date the Planning Agreement was entered into;
 - iii) the names of the parties to the Planning 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.
- b) 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.
- c) Council will also make the Planning Agreement register available to the public on its website.
- d) 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.

23 Breaches of this Policy

Breaches of this Policy may result in an investigation of the alleged breach in line with relevant Council policies including the Model Code of Conduct.

Any alleged criminal offence or allegation of corrupt conduct will be referred to the relevant external agency.

24 Administrative Changes

From time-to-time circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made including branding, Council Officer titles or department changes and legislative name or title changes which are considered minor in nature and not required to be formally endorsed.

25 Version Control – Policy History

This Policy will be formally reviewed every three years from the date of adoption or as required.

Governance use only:

Document	Voluntary Planning Agreements Policy	<i>Uncontrolled Copy When Printed</i>	
Custodian	Strategic Investment and Property Manager	Version #	Version 2
Approved By	Council	ECM Document #	34869568
Next Review Date	November 2026		

Amended by	Changes made	Date Adopted
Strategic Investment and Property	This Policy has been updated having regard to the Planning Agreements Practice Note – February 2021 published by the then Department of Planning, Industry and Environment (Practice Note).	21 November 2023
Strategic Investment and Property	New Policy	25 February 2020

Attachments

Letter of Offer – Template

(refer separate document and download)