



VOLUNTARY PLANNING AGREEMENTS POLICY



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Title	Voluntary Planning Agreements Policy
Summary	This policy establishes a framework to guide the use of Planning Agreements by Wingecarribee Shire 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"> • Provide safe and sustainable local infrastructure
Legislative Reference	<ul style="list-style-type: none"> • Local Government Act 1993 • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2021 • Planning Agreements Practice Note – February 2021 • Independent Commission Against Corruption Act, 1988
Related Council Documents	<ul style="list-style-type: none"> • Code of Conduct • Local Strategic Planning Statement Local Environmental Plan (LEP) and Development Control Plan (DCP) Local Housing Study and Strategy Integrated Transport Strategy Affordable Housing Policy
Version Control	See last page

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PART A. INTRODUCTION

We will consider entering a voluntary planning agreement (Planning Agreements) where it offers improved planning outcomes or community benefits that cannot be achieved through Section 7.11 or 7.12 conditions.

1 Purpose

The purpose of the Wingecarribee Shire Council's Voluntary Planning Agreements Policy (Policy) is to establish a framework, policies and procedures which Council will apply to guide the use of Planning Agreements by Wingecarribee Shire Council, in keeping with the provisions of the Act, the *Environmental Planning and Assessment Regulation 2021* (**the Regulation**) and the Practice Note.

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 Wingecarribee 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.

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

- 2.1 Parties to the Planning Agreement are Council and the Developer.
- 2.2 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.
- 2.3 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 Wingecarribee Council area.
- 2.4 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.
- 2.5 Planning Agreements may be used by Council for purposes of funding any public infrastructure, amenities and services that compliment Council's

Contributions Plan(s) where they are not wholly unrelated to the particular development.

3 Background

The Policy has been prepared to provide a framework for the preparation and execution of voluntary planning agreements pursuant to the provisions of Part 7 of the Environmental Planning and Assessment Act 1979 (**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, Housing and Infrastructure (**Practice Note**).

4 Definitions

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

Councillor	Wingecarribee Shire Council elected representative
Council Officer	Wingecarribee Shire Council members of staff (including full-time, part-time, casual, and contracted staff)
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 7.12 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 if formed.
Developer	is a person who has sought a 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	<i>has the same meaning as in the Act.</i>
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.
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.
Land Value Uplift	is the uplift or increase in land value as a result an Instrument Change. Planning Agreements should not be used explicitly for value capture in connection with the making of planning decisions.
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	do not include water supply or sewerage services

public 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 proponents 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 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 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 benefits;
- 5.10 To facilitate alignment 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:

- public amenities and public services;
- affordable housing;
- community facilities;
- conservation or enhancement of the natural environment;
- public open space; and
- transport or other infrastructure.

Development Contributions can be:

- dedication of land to Council;
- monetary contributions;
- construction of public infrastructure;
- provision of material public benefits; or
- 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 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 require public benefits unrelated to the particular development to which the Planning Agreement relates.
- 7.10 Planning Agreements are to be consistent with the Act, the Regulation, the Practice Note and any other applicable law.
- 7.11 It is appropriate to consider the partial or full waiver of section 7.11 or s7.12 contributions by Planning Agreements where:
- 7.11.1 A Developer wants to provide infrastructure in addition to, or at a higher standard than what has been specified under the Contributions Plan.
 - 7.11.2 A Developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of infrastructure.
 - 7.11.3 A different and better or more innovative outcome can be negotiated, than can be achieved through imposing contributions pursuant to s7.11 or 7.12 of the Act.
- 7.12 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.
- 7.13 Planning Agreements entered into by Council will not exclude contributions payable under Subdivision 4 of the Act unless the Minister administering the Act agrees and is also a party to the Planning Agreement.

PART B. VPA POLICY GUIDELINES AND PROCEDURES

This Policy shall be referred to when negotiating and entering into an agreement with a Developer, landowner, or similar entity to provide Material Public Benefit in the Wingecarribee Shire Council Local Government Area (LGA). The acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council.

This Policy shall not limit or fetter Council's statutory discretion or duty in determining Development Applications under the EP&A Act.

8 Scope of Agreements

This part of the Policy provides guidance in relation to the scope of Planning Agreements, including relationship of Planning Agreements with local Contributions Plans, Development Applications and Planning Proposals, and how they will be administered.

8.1 Relationship of a Planning Agreement to Contributions Plans

Council may impose a condition of consent to a Development Application, or a complying Development Application, requiring a Development Contribution under section 7.11 or the payment of a levy under section 7.12 of the EP&A Act (if consistent with the relevant Contributions Plan).

A Planning Agreement may partly or fully exclude the application of section 7.11 or section 7.12 contributions to development the subject of a Planning Agreement. Sections 7.4 and 7.11 of the EP&A Act set out the way a Planning Agreement can influence contributions and levies imposed as conditions of development consent.

Planning Agreements can be used to formalise arrangements for Developers delivering infrastructure that is out-of-sequence compared to the priorities in the Contributions Plan. In this circumstance, where the delivery of infrastructure is aligned, this generally should wholly or partly exclude the application of sections 7.11 or 7.12. Planning Agreements should clearly specify any land or works that are within the Contributions Plan, the cost outlined in the Schedule of Works and the indexing method. It should reference the infrastructure priorities section of the Contributions Plan to indicate when the Developer should receive credit for the infrastructure they deliver.

In other circumstances, the intent of a Contributions Plan must not be undermined by Planning Agreements delivering infrastructure which does not align with established infrastructure priorities. Infrastructure not identified in a relevant Contributions Plan or a strategic plan, but which otherwise achieves a justifiable Material Public Benefit, will be considered on a case-by-case basis.

Planning Agreements that include land or works that are not included in the Contributions Plan should be specified as not being subject to credit from the relevant

plan. Planning Agreements that include land or works that are included in the Contributions Plan should be specified as being subject to credit from the relevant plan.

8.2 Planning Agreements and Development Applications

When determining a Development Application, Council is required by section 4.15 (previously section 79C) of the EP&A Act, to take into consideration any relevant Planning Agreement that has been entered into or a draft agreement a Developer has offered to enter into. Council is also required to take into consideration any public submissions made in respect of the Development Application, which may include submissions relating to a Planning Agreement.

Section 7.7 prevents Council refusing a DA on the grounds that a Planning Agreement has not been entered into in relation to the proposed development.

Section 7.7 also authorises Council to require a Planning Agreement to be entered into as a condition of development consent, but only if it requires an agreement that is in the terms of an offer made by the Developer in connection with the Development Application or a Planning Proposal.

Council and Developers must make a judgement in each case about whether the use of a Planning Agreement is beneficial and otherwise appropriate. However, Planning Agreements should never be used to require compliance with, or re-state obligations imposed by conditions of development consent as it may create unnecessary and inappropriate duplication.

8.3 Relationship between Planning Agreements and varying development standards (Clause 4.6)

The Land and Environment Court has handed down decisions limiting the ability of consent authorities and Developers to rely on Planning Agreements to justify variations to development standards contained in local environmental plans proposed by Development Applications. Relevant case law includes;

- Jubilee Properties v Warringah Council [2015] NSWLEC 1042
- Mecone Pty Limited v Waverley Council [2015] NSWLEC 1312.

The Land and Environment Court decisions reinforce the principle that the benefits provided under a Planning Agreement should not be used to justify a variation from a development standard unless the benefit is directed towards achieving the planning objectives of the relevant development standard.

8.4 Planning Agreements and Planning Proposals

Planning Agreements can be entered into in connection with a proposal to change the land use zoning and/or make changes to development controls in an LEP in relation to a site. Planning Agreements negotiated in this context will generally seek to offset any

associated uplift afforded by an LEP amendment by way of providing infrastructure provision or other related Material Public Benefits to support the development and wider community.

The EP&A Act requires a planning authority to state the objectives and outcomes of a Planning Proposal, and to describe and justify the process by which they will be achieved. The role of a Planning Agreement in facilitating these objectives or outcomes should be clearly set out in the Planning Proposal documentation.

Council is to consider all applications for Planning Proposals on their merits. The unwillingness of a Developer to offer to enter into a Planning Agreement related to land value increase should not be a reason why a Planning Proposal is refused. Equally, a Planning Proposal that may have negative planning outcomes cannot be justified solely on the basis of an opportunity to enter into a Planning Agreement.

Council will not prioritise site-specific Planning Proposals on the basis they provide for opportunity to capture windfall gain or LGA-wide strategic planning initiatives. For instance, infrastructure and Public Benefit, including affordable housing, are likely to be planned and delivered in a more comprehensive way if linked to broad strategic planning exercises, rather than if planning impacts and potential Public Benefits are determined on a site-by-site basis.

Other contributions mechanisms can also provide for a more efficient and reasonable distribution of the costs of infrastructure associated with growth, rather than focusing on individual large developments. These considerations are not inconsistent with the role of a council to assess site specific Planning Proposals on their planning merits.

8.5 Competing proposals to provide planning benefits

Situations may arise where Council is faced with competing applications, each accompanied by offers to enter into Planning Agreements providing Material Public Benefits. In such cases, provided the planning benefits offered are not wholly unrelated to development, they may be considered in connection with the applications and it may be perfectly rational for Council to approve the proposal which offers the greatest Material Public Benefit, all things being equal.

8.6 Planning Agreements or other contributions mechanisms?

Planning Agreements should complement other contribution mechanisms, including section 7.11 contributions and section 7.12 levies for local infrastructure. They can be used to deliver infrastructure outcomes specified in these mechanisms, strategic planning documentation, or additional Public Benefit.

A Planning Agreement provides flexibility in terms of delivery and timing. The funds or works are not required to have a direct nexus with the proposal but should be related. A Planning Agreement should be considered where Council is satisfied that there is a direct benefit over and above the existing Contributions Plans in place. Council must be

satisfied that entering into a Planning Agreement will not compromise the delivery of infrastructure outlined in a Contributions Plan.

A Planning Agreement also allows for Recurrent Costs, whereas a Contributions Plan does not (under current legislation). Therefore, a Planning Agreement may be particularly valuable where there is ongoing maintenance and or operational costs associated with infrastructure, such as watercycle management.

A Planning Agreement may also include the delivery of Material Public Benefit in the form of affordable housing (providing the Council complies with the Environmental Planning and Assessment (Planning Agreements) Direction 2019) and other related planning issues, which are not identified in a Contributions Plan.

However, Planning Agreements generally should not be used as de facto substitutes for Contributions Plans. There is a clear legislative, regulatory and policy framework supporting Contributions Plans which does not (presently) apply to Planning Agreements. Where there is a need for public infrastructure across a development area with a range of landowners, a Contributions Plan is more appropriate because it simplifies transactions and has clearer underpinning strategic planning.

9 Circumstances for Council to Enter into a Planning Agreement

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

- 9.1 A Development Application or application for a CDC has been or is proposed to be made, or there is a proposed Instrument Change; and
- 9.2 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):

- 9.3 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 and satisfy the acceptability test (see section 17) or
- 9.4 Where the Planning Agreement mitigates or compensates for the impacts of the development to which it relates; or
- 9.5 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.

9A VPA in lieu of Public Carparking (New content)

Council may consider entering into a VPA to accept monetary contributions towards public carparking provision in lieu of the onsite provision of public parking, where the development has demonstrated merit. A VPA (Carparking) should not be used to provide long term carparking for persons involved in the operation of the subject premise. This is considered private parking and must be provided onsite or in accordance with Council's DCP.

Where parking determined as public car parking (required under the DCP) cannot be provided onsite due to site constraints, Council may consider entering into a VPA subject to the following considerations:

- a) The development application is located within the Bowral Town Centre as defined by the adopted Bowral Town Centre Master Plan 2024.
- b) The proposed carparking contribution is for public carparking requirements generated by the development, as determined through the development assessment process
- c) The VPA offer is in accordance with Council's officers' determination of the shortfall of public parking
- d) The proposed monetary contribution is in accordance with the rate published on Council's website (VPA standard rates)
- e) The developer agrees to enter into Council's standard VPA template – VPA Carparking Requirements.

10 Assessing proposed provisions of a Planning Agreement

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:

- 10.1 All Planning Agreements will meet the acceptability test (see the "Acceptability Test" contained in Section 17 of this Policy).
- 10.2 Demand for new public infrastructure or services that are created by an Instrument Change or Development Application is to be considered and taken into account.

- 10.3 Independent third parties may be used where necessary to assess provisions of Planning Agreements (see “Probity Guidelines” contained in Section 19 of this Policy).
- 10.4 The timing of development is to align with the delivery of the public benefit.
- 10.5 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.
- 10.6 Whether past infrastructure provision shortfalls or deficiencies that would otherwise hinder development are being addressed.

11 Types of contributions and benefits

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.

- 11.1 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.
- 11.2 Planning Agreements may require funding for infrastructure and works in addition to contributions that would apply under sections 7.11 and 7.12 of the Act.
- 11.3 Development Contributions may be money, or the dedication of land, or other material public benefit.
- 11.4 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.
- 11.5 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.
- 11.6 Development Contributions required or negotiated under a Planning Agreement to deliver the public benefits noted in clause 11.5 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.

- 11.7 Council encourages the use of Planning Agreements to deliver additional open space to the community.
- 11.8 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.

12 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 (s7.4).
- 12.3 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).

13 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:

- 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 this is to be underwritten by Developers to mitigate for risk;
- 13.2 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);

- 13.3 All Planning Agreements will be registered on title, 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;
- 13.4 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.

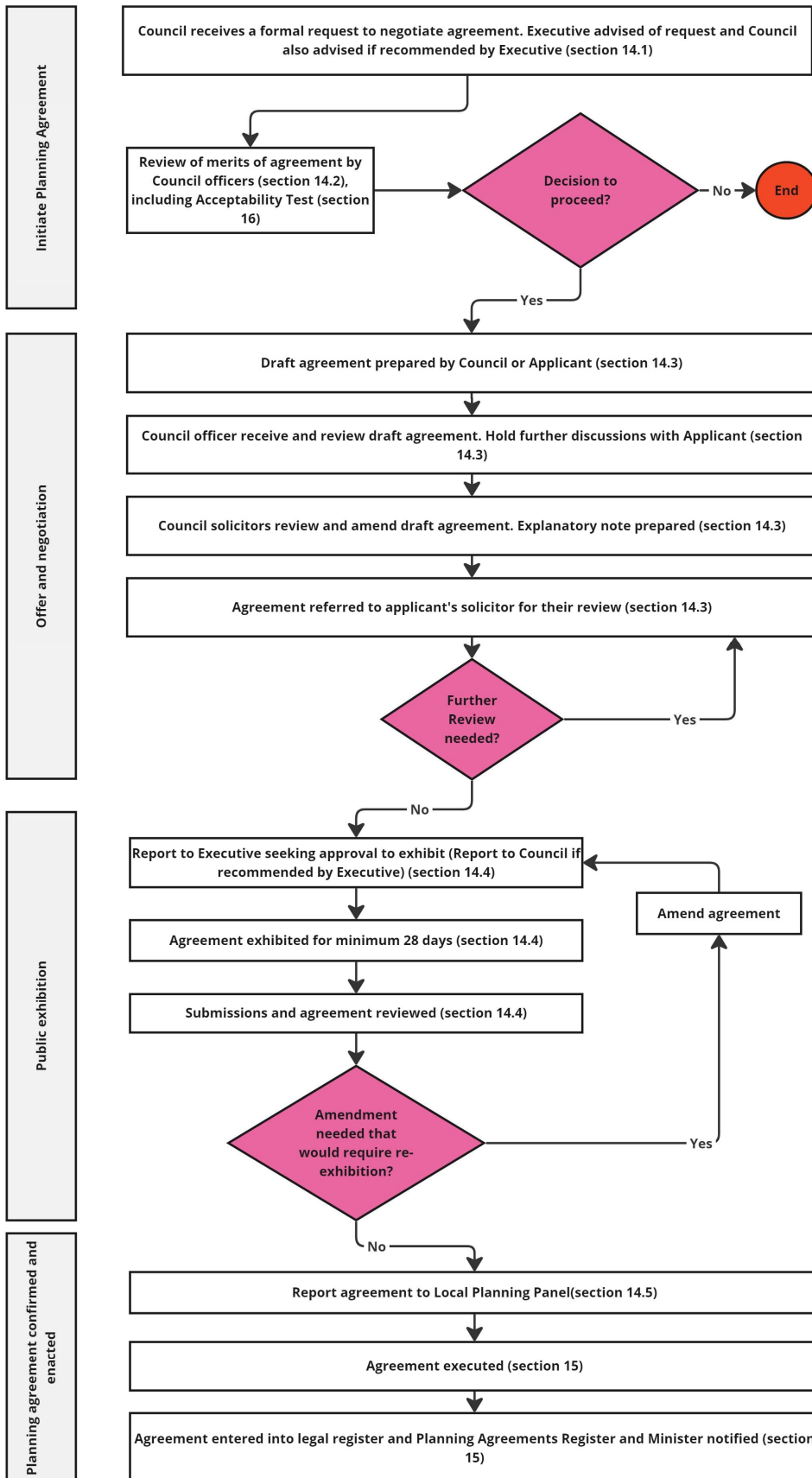
PART C. GUIDELINES/PROCEDURES

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.

14 The Planning Agreement Offer and Negotiation Process

The process for negotiating and entering into a Planning Agreement is illustrated in the process diagram below. The following section provides details on each step in the process.

Process for preparing a Planning Agreement



14.1 Preliminary discussions and formal request

- 14.1.1 Submission of a letter of 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.

14.2 Reviewing the merits of the agreement

- 14.2.1 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”, see Section 17 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.

14.3 Offer and negotiation

- 14.3.1 Council will instruct its lawyers to prepare the first draft of the Planning Agreement document based on the Developer’s letter of offer. The draft Planning Agreement will be developed in negotiation with the Developer.
- 14.3.2 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.
- 14.3.3 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.
- i. Considerations in the negotiations, guided by this Policy will include:
 - ii. Other parties that may need to be involved and are agreed to by the parties.
 - iii. The infrastructure that is to be provided both on and/or off the site.
 - iv. The timing of the provision of any Development Contributions.
 - v. Whether contributions or levies under s7.11 and 7.12 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.
 - vi. The bank guarantees required for security.
 - vii. Registration of the Planning Agreement on the land title of the development site in accordance with Section 7.6 of the Act.

14.4 Public exhibition

- 14.4.1 The draft Planning Agreement will be reported to the Local Planning Panel and then the governing body of Council for a decision on whether to progress to public exhibition of the draft Planning Agreement.
- 14.4.2 Consultation with relevant external stakeholders and public exhibition of the Planning Agreement and explanatory note in accordance with the Regulation for a minimum period of 28 days and together with the Development Application or Planning Proposal.
- 14.4.3 Council's authorised delegate considers whether to enter into the Planning Agreement after considering the result of stakeholder consultation and public exhibition.
- 14.4.4 Any amendments required to the draft Planning Agreement are made and, if necessary, the amended draft Planning Agreement and Explanatory Note are re-exhibited.

14.5 Administration and implementation of agreement

- 14.5.1 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 Section 3.34 of the Act or to grant any development consent); and
- 14.5.2 Recording the agreement in Council's Planning Agreement Register.

15 Administration and Implementation of Agreement

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

15.1 Entering into a Planning Agreement

- 15.1.1 A Planning Agreement is entered into when it is signed and dated by all parties to the agreement.
- 15.1.2 Parties to a Planning Agreement are the Council and the Developer, and if the Developer is not the owner of the Land, the landowner.
- 15.1.3 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;
 - iii. How completed work is to be handed over to Council.

15.2 Council's Costs of Entering into a Planning Agreement

- 15.2.1 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.
- 15.2.2 Generally, Council requires all reasonable costs in this regard be met by the Developer.

15.3 Monitoring of a Planning Agreement

- 15.3.1 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.
- 15.3.2 Council may require the developer (at the developer's cost), to report periodically to Council on their compliance with obligations under the Planning Agreement.
- 15.3.3 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.

15.4 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):

- 15.4.1 The Developer's obligations have been fully completed in accordance with the agreement; or
- 15.4.2 The development consent to which the agreement relates has lapsed; or
- 15.4.3 The development consent to which the agreement relates has been revoked; or
- 15.4.4 The Developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms.
- 15.4.5 Council may negotiate a modification to a Developer's obligations under a Planning Agreement where:
- i. There has been a material change to the planning controls for the land to which the agreement relates; or
 - ii. There has been a material modification to the development consent to which the agreement relates.

15.5 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:

- 15.5.1 The bank guarantee must be provided on execution of the Planning Agreement.
- 15.5.2 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.
- 15.5.3 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.
- 15.5.4 The bank guarantee must be such that all bank charges and other costs of setting up and maintaining it are met by the developer.

15.6 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.

16 The Acceptability Test

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

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

- 16.1 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
- 16.2 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
- 16.3 produces outcomes that meet the general values and expectations of the public; and
- 16.4 protects the overall public interest; and
- 16.5 provides for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits sought by Council; and

- 16.6 protects the wider community against harm resulting from inappropriate impacts of development that is not supported by commensurate levels of local infrastructure.

17 Dispute resolution

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

- 17.1 Direct negotiation between senior representatives of the parties, and if that is unsuccessful;
- 17.2 Mediation; and
- 17.3 Expert determination in appropriate circumstances.

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

18 Probity Guidelines

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.

18.1 Overarching probity matters that apply

- 18.1.1 To avoid conflict of interest, the involvement of independent third parties will be instituted if necessary (See Section 19.3).
- 18.1.2 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.
- 18.1.3 Councillors will not be involved in the negotiation of Planning Agreements
- 18.1.4 All negotiations by Council with a land owner or Developer and their consultants will be documented and will be undertaken at arm's length.

18.2 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:

- 18.2.1 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;

- 18.2.2 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;
- 18.2.3 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
- 18.2.4 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).

18.3 Use of Independent third parties.

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

- 18.3.1 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;
- 18.3.2 Where factual information is necessary in the course of negotiations such as in obtaining independent costings for valuations;
- 18.3.3 Where mediation or expert determination is required for dispute resolution under a Planning Agreement;
- 18.3.4 Where sensitive financial or other confidential information might need to be established or verified during the course of negotiations;
- 18.3.5 In order to facilitate complex negotiations where numerous parties are stakeholders or large projects are involved; and
- 18.3.6 In order to ensure transparency, objectivity and accountability in the Planning Agreement processes.

18.4 Access to Planning Agreements

- 18.4.1 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.
- 18.4.2 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.

18.4.3 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.

18.4.4 Council will also make the Planning Agreement register available to the public on its website.

18.4.5 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.

19 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.

20 Financial Management of Voluntary Planning Agreements

All Voluntary Planning Agreements will be managed in accordance with the financial terms stipulated within each agreement. Any funds that are collected from a Voluntary Planning Agreement will be placed in the VPA Reserve and released once the funds have been spent or acquitted in accordance with the terms in which they were collected. Council will bring to account any in-kind assets that are a result of a Voluntary Planning Agreement at the time Council takes control of such assets. All transactions will be brought to account in accordance with relevant accounting standards and relevant accounting codes.

21 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.

22 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	Uncontrolled Copy When Printed
Custodian	Executive Manager Strategic Outcomes (EMSO)	Version 3
Approved By	Council on 11 December 2024	ECM Document #
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Amended by	Changes made	Date
EMSO	Inclusion of CI 9A	18 September 2024
EMSO	Revisions to public purposes	29 November 2024