

GUIDELINES



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| Name of Guidelines: | Planning Agreement | |
| Approved by MANEX/Manager: | Date: 7 July 2023 | By: Manager Land Use Planning |
| Last review date: | | |
| Review timeframe: | 2 years (or when required as a result of changes to legislation or Council operations) | |
| Next scheduled review date: | July 2025 | |
| Related legislation: | <ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979 (NSW)</i> • <i>Environmental Planning and Assessment Regulation 2021 (NSW)</i> • <i>Great Lakes Local Environmental Plan 2014 (NSW)</i> • <i>Greater Taree Local Environmental Plan 2010 (NSW)</i> • <i>Gloucester Local Environmental Plan 2010 (NSW)</i> | |
| Association policies/documents: | <ul style="list-style-type: none"> • <i>Planning Agreement Policy (MidCoast Council)</i> • <i>Rezoning Applications Policy (MidCoast Council)</i> • <i>Rezoning Applications Stage 1 & 2 Guidelines (MidCoast Council)</i> • <i>Clause 4.1B of Great Lakes Local Environmental Plan 2014 Interim Policy (MidCoast Council)</i> • <i>Community Engagement Policy (MidCoast Council)</i> • <i>Determination of Applications and Approvals Policy (MidCoast Council)</i> • <i>Fraud and Corruption Control Policy (MidCoast Council)</i> • <i>Code of Conduct (MidCoast Council)</i> • <i>Councillor and Staff Interaction Policy (MidCoast Council)</i> • <i>Determination of Applications and Approvals Policy (MidCoast Council)</i> • <i>Local Environmental Plan Making Guideline (Department of Planning, Industry and Environment)</i> • <i>Planning Agreement Practice Note (Department of Planning, Industry and Environment)</i> | |
| Responsible division: | Liveable Communities | |

1. GUIDELINE OBJECTIVES

- a) To provide a consistent approach and guidance for Council staff in relation to planning agreements.
- b) To assist developers and the broader community in understanding Council's approach to planning agreements.

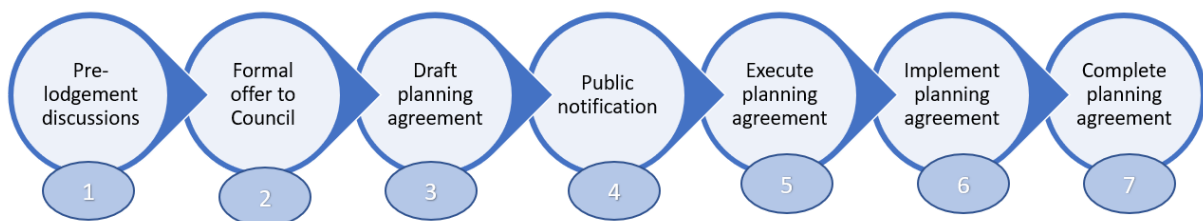
2. OVERVIEW

A planning agreement is a legal agreement most commonly between a developer and Council but may also include other relevant planning authorities (e.g. NSW Government Departments). It outlines the material public benefit that a developer will make to support or provide infrastructure delivery. Planning agreements are made under section 7.4 of the *Environmental Planning and Assessment Act 1979* (referred to as the Act). They are one of several infrastructure contributions mechanisms set out in the Act by which development contributes to the infrastructure needed to support it.

Planning agreement steps

This Guideline separates a planning agreement into seven broad steps which are shown in Figure 1. Each step will be explained in more detail to assist Council officers, developers and the broader community in understanding planning agreements.

Figure 1: Steps in a planning agreement



When to use planning agreements

Planning agreements are generally considered in conjunction with a development proposal in the form of either a development application or a planning proposal, however there are also times when it will be a stand-alone agreement.

The objectives of a planning agreement will be dictated by the circumstances of each case. Some of the common circumstances where they may be identified as an appropriate contribution mechanism are listed below:

- in major development sites or precincts that are owned by a single landowner or a group of landowners.
- where the developer has a direct incentive to be involved in the delivery of community infrastructure, such as bringing forward potential development.
- where the developer wants to provide in addition to, or at a higher standard than, what has been specified in an existing contributions plan.
- where a proposed development has not been anticipated by Council, and therefore works and facilities to cater for this development have not been identified and planned for. A planning agreement can be prepared to specifically target and address the needs of the development.
- meeting the demands created by the development for new or augmented public infrastructure, amenities and services.

- compensating for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.
- the conservation, or enhancement of the natural world.

Options for delivering a planning benefit

1. The form of development contributions to be provided under a planning agreement will be determined on a case by case basis depending on:
 - a) the particulars of the proposed change through the planning proposal or development application to which the proposed planning agreement relates; and
 - b) the identified need for further public benefits.
2. Development contributions under a planning agreement will generally take one or more of the following forms:
 - a) payment of a monetary contribution.
 - b) the dedication of land.
 - c) the provision of works or infrastructure.
 - d) the provision of amenities or services.

Relationship to other contributions mechanisms

A planning agreement will not automatically exempt developers from any existing local infrastructure contribution plans (also known as contribution plans) that may apply under the Act. Council will negotiate any such exclusion as part of the preparation of the planning agreement, having regard to the circumstances of the proposed change through a planning proposal, development application or complying development certificate.

Where the application of s7.11 of the Act is not excluded, Council will generally not permit any material public benefits provided under the planning agreement to be:

- a) taken into consideration when imposing a local infrastructure contribution to be imposed under s7.11 of the Act; or
- b) used to offset any contribution imposed under s7.11 of the Act, unless the relevant material public benefit provided under the planning agreement is agreed to by Council to satisfy any such contribution.

Council will not agree to a planning agreement excluding the operation of s7.24 of the Act unless the Minister or the appropriate development corporation approves that exclusion.

Probity

Public probity is important to ensure that the negotiation of any planning agreement is fair, transparent and directed at achieving public benefits in an appropriate manner. In this regard, Council will:

- a) Assist the community's understanding of the process by providing explanation about Council's role in entering into planning agreements and how Council will deal with developments applications/ planning proposals objectively.
- b) Ensure all public documents associated with the development, execution and delivery of planning agreements are easily accessible on Council's website and, wherever possible, the documents are to be written in 'plain English'. Acknowledging that a planning agreement itself is a legal document and therefore can be complex to understand.
- c) Ensure appropriate delegations and separation of responsibilities when considering development applications/planning proposals that involve planning agreements.

- d) Ensure that Councillors and Council staff understand their delegated roles in negotiating a planning agreement, to avoid any potential conflict. To assist with this Council has several documents that provide guidance. This includes, but is not limited by, Council's Code of Conduct, Councillor and Staff Interaction Policy, Fraud and Corruption Control Policy and Determination of Applications and Approvals Policy
- e) Ensure that modifications to approved planning agreements should be subject to the same scrutiny as the original development application.
- f) Wherever possible complete negotiations via written correspondence and provide a record of any face-to-face meetings. This will ensure that all discussions are clearly documented to provide transparency, accountability and good record-keeping. This allows timely consideration and resolution of any issues raised and facilitates carefully considered decision making by all parties.

Apart from the above, further measures may also include, but not be limited by, the following procedures:

- a) The executors of the planning agreement on Council's behalf will not be involved with the face-to-face negotiation of the agreement, this can include, but not limited by, Councillors, the General Manager or Directors with appropriate delegated authority.
- b) A Council officer with appropriate delegated authority will negotiate a planning agreement on behalf of the Council in accordance with Council's Planning Agreement Policy and Guidelines.
- c) Council will ensure that all negotiations with a developer(s) and their consultants are sufficiently separated and documented.
- d) Where the Council has a commercial interest in a development that is the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development.

Payment of Council's costs

In line with Council's Fees and Charges, the developer will be required to pay a Planning Agreement Management Fee to cover Council's costs associated with planning agreements. This can include, for example, drafting of documents, legal costs, notification costs, land valuations etc.

Payment of the management fee will be required before the drafting of the planning agreement. Any additional costs will be negotiated between the parties and required before a planning agreement is executed.

Dispute resolution

The planning agreement is to detail requirements for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

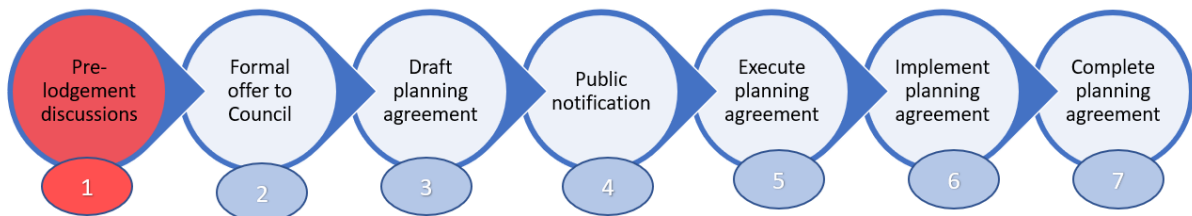
Mining operations

1. For any planning agreement which relates to mining operations, Council will generally require the payment of a monetary contribution as one component of the planning agreement.
2. The purpose for which any such monetary contribution may be applied by Council under paragraph (1), will include but not be limited to, any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in section 7.4(2) of the Act. This includes any such purpose which proactively manages the impacts of mining to secure a prosperous and enjoyable future for residents of the MidCoast, which may include the following purposes:

- a) Fostering business and job creation.
 - b) Education and training.
 - c) Sports and recreation.
 - d) Homelessness and mental health.
 - e) Infrastructure.
 - f) Environmental Sustainability.
3. Ultimately the public benefits for which any such contribution are used will be administrated by Council in partnership with the community.
 4. In terms of the value of the material public benefits that Council will agree to accept in a planning agreement which relates to mining operations, Council may adopt separate policies, or pass separate Council resolutions.

3. THE PLANNING AGREEMENT PROCESS

STEP 1 – Pre-lodgement discussions



The first step is generally initiated when a developer contacts Council about a development application or a planning proposal that has the potential to generate demand for additional infrastructure, servicing or any other material public benefit needed to support the community resulting from the development. The type of development proposals that accompany planning agreements are usually more complex in nature and include numerous steps through the planning system. It is therefore recommended that the developer contacts Council as early as possible to arrange a pre-lodgement meeting to discuss the particulars of the development proposal and planning agreement.

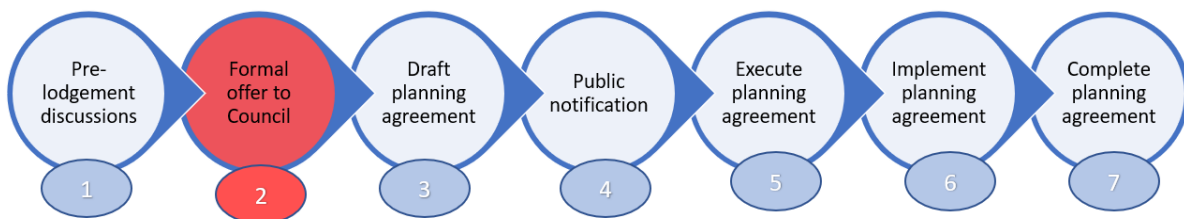
- **Pre-lodgement Meeting –**
 - a. Development Applications – developer books a meeting via Council’s website. Details on the process and requirements for the meeting are on Council’s website.
 - b. Planning proposals – the developer contacts Council and arranges to meet and discuss a potential planning proposal, including the option of entering into a planning agreement. Council’s Policy on Rezoning Applications and the accompanying Guidelines for stage 1 and 2 sets out the process related to planning proposals. This includes a “Scoping Proposal” and “Interim Authority and Government Agency Planning Proposal Pre-lodgement Checklist” that will need to be completed by the Developer and provided to Council two weeks prior to the scheduled meeting date. Templates for these documents are included in the Rezoning Applications Guidelines (Stage 1 and 2).
 - c. Stand-alone planning agreement – where a developer seeks to enter into a planning agreement not associated with a development proposal, Council will require information on the proposal. Appendix A gives guidance on the type of information to be provided by the developer to ensure Council has enough detail to have a meaningful discussion about the proposal. This will also guide Council as to any other parties that may need to be included in the pre-lodgement meeting. The developer will need to provide this information to Council at least two weeks before the scheduled meeting date. This is consistent with Council’s Guidelines on Rezoning Applications (stage 1 and 2).

- d. If a decision is made to negotiate a planning agreement, identification of the main contributions to be included in the planning agreement, the form that the contribution may take (for example monetary or land dedication or works and timing) will be discussed.

- **Negotiation –**

- e. Further negotiation on the specific terms of the proposed planning agreement will follow the pre-lodgement meeting. Appendix B provides the ‘acceptability test’ that provides guidance to Council officers in considering and negotiating the detail of a planning agreement. The outcome of the acceptability test will provide the basis for the report to Council seeking a Gateway Determination or as written feedback to the developer, where an application does not meet the test. Appendix C provides more details around monetary matters related to planning agreements.

STEP 2 – Formal offer to Council



- **Formal submission to Council –**

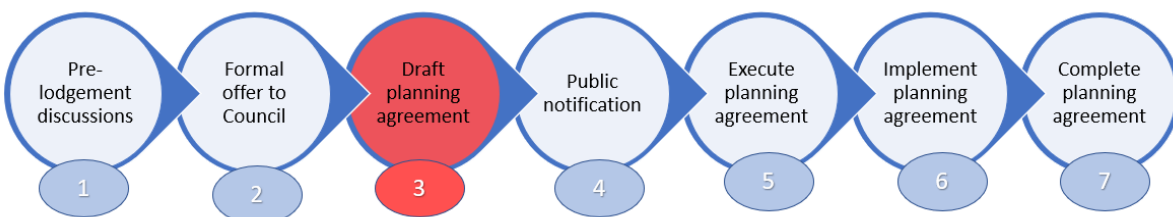
- a. If agreement is reached on the terms of the proposed planning agreement, the developer formally submits a letter of offer to Council to enter into such an agreement. Refer to Appendix D for requirements to be included in the letter of offer to Council.
- b. Any associated development proposal is also formally submitted via the NSW Department of Planning and Environment’s website.

Council will review the letter of offer and further negotiations may be undertaken on specific aspects of the planning agreement.

- **Assessment of the associated development proposal –**

- c. Development assessment staff independently undertake their assessment of the development application.
- d. Planning proposals are processed according to the Act and Regulations and Council’s policy and guidelines on rezoning proposals.

STEP 3 – Draft planning agreement



- **Drafting of planning agreement –**

Once all fees have been paid by the developer, Council will begin drafting the planning agreement based on the key terms and details of the letter of offer and any further discussions or negotiations with the developer. As part of this step, Council will undertake land title and

company searches to ensure the information provided is sufficient. More information may be requested from the developer to assist with the legal drafting.

- **Explanatory note –**

Council drafts an explanatory note to assist the broader community in understanding the details of the planning agreement and facilitate informed discussion. The explanatory note needs to be written in a way that it is possible for a person to read the explanatory note and readily understand the nature of the development proposed and the public benefits to be provided.

The type of information that is included in an explanatory note includes, but is not limited by, the following;

- a) Identify how the agreement promotes the public interest.
- b) Identify whether the agreement conforms with Council’s capital works program (if applicable).
- c) Indicate the timing of delivery and provide details where certain requirements of the agreement must be complied with before any construction certificate, occupation certificate or subdivision certificate is issued.

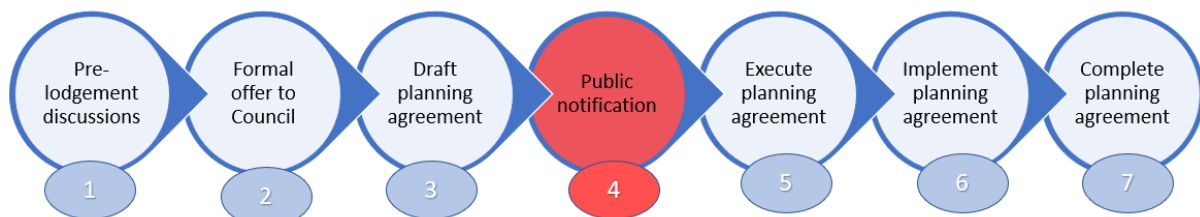
- **Finalising the draft planning agreement and explanatory note –**

Once complete, Council will issue the draft planning agreement and explanatory note to the developer(s) for comment. If the developer requests any changes, they will be assessed and if applicable a revised draft planning agreement and explanatory note will be issued to the developer(s).

- **Report to Council –**

Once there is agreement between all parties on the draft planning agreement and explanatory note, a report will be presented to Council seeking approval to notify the agreement along with any associated development proposal.

STEP 4 – Public notification



- **Public notification –**

The Act requires that a planning agreement must be publicly notified and available for inspection for a minimum period of 28 days. Council’s Community Engagement Strategy 2022-2025 requires a minimum exhibition timeframe of 25 working days. In some instances, Council may choose to exhibit for a longer period, for example when notification occurs over the public holidays. The draft planning agreement and explanatory note will be publicly available on Council’s website with the option to make an online submission.

- **Report to Council –**

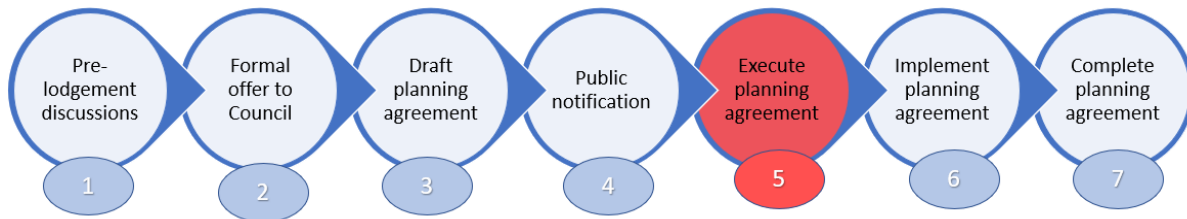
The report to Council will detail any public submissions received during the notification period, and where necessary, an amended version of the planning agreement and associated development proposal is presented for Council’s consideration. This is usually where Council will make a decision whether to accept the planning agreement and proceed to execute the

agreement. If no submissions are received, a report to Council may not be required and Council may proceed to execute the agreement.

- **Re-notification (optional) –**

Council may publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates. This can occur if a material change is made to the terms of the planning agreement. A report will be presented to Council if re-notification is to occur.

STEP 5 – Execute a planning agreement



- **Signing of planning agreement –**

A planning agreement becomes a legal document when it is signed by all parties. Council will require the developer to sign the same number of copies of the planning agreement as there are parties, (for example two copies will need to be signed where there are two parties to the planning agreement).

A planning agreement can be entered into as a condition of granting development consent to which the agreement relates. A planning agreement that accompanies a planning proposal should be executed prior to making an amendment to an environmental planning instrument.

1. Registration on title –

It is required that the developer register the planning agreement on the title of the relevant folios with Land Registry Services. This will ensure the agreement remains in force regardless of any change in land ownership. The timing for registration will be included in the planning agreement, but generally this will be required as soon as the agreement is executed.

When registering the planning agreement on the title, all maps should be black and white – coloured maps are not accepted by Land Registry Services.

2. Evidence of satisfactory arrangements –

Council may require evidence of satisfactory arrangements from the developer, generally this will be documentation proving that:

- a) the planning agreement has been registered on the title of the land that is proposed to be developed, and/or
- b) obligations under the planning agreement have been met.

3. Contribution delivery triggers –

The planning agreement will establish the timing for contributions to be paid or delivered by a developer. Triggers for contributions may include:

- a) a monetary contribution upon the execution of the planning agreement;
- b) monetary contributions due at lot thresholds, being the creation of a certain number of residential lots via subdivision certification. Lot thresholds can reflect the entire development or defined stages. For example, in the instance of staged development, the

developer may seek a release for Stage 1 of a three-stage development. In this instance, the developer would pay a contribution for the lots in Stage 1, then undertake the same process for Stages 2 and 3 as development progresses;

- c) delivery of infrastructure or payment of monetary contributions or undertaking works at specific points of the development stage in order to meet forecast demand. For example, requiring the completion of road works before the issuing of the subdivision certificate to create the 100th residential lot or completion of a specific stage of the development. There may be several infrastructure items and types required at different trigger points or stages;
- d) delivery of infrastructure or payment of monetary contributions or undertaking works based on the timing of external factors such as the delivery of works by a state agency or adjoining developer; and/or,
- e) recurrent payments, generally annually, as outlined in the planning agreement.

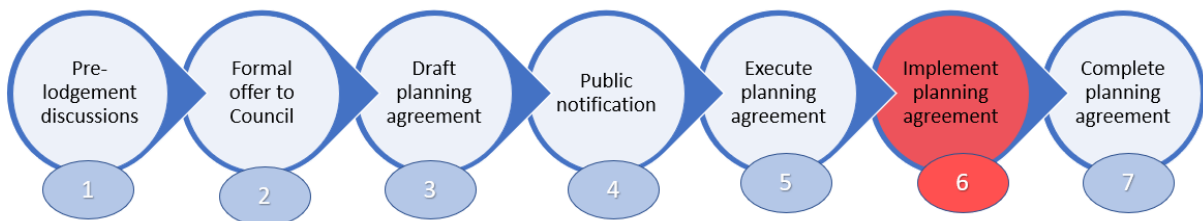
4. Planning agreement register –

Council has a legal responsibility to keep a public register of all active planning agreements. This Planning Agreement Register is available on Council's website. The register is also included in Council's annual report. Council will also publish the required information on the NSW planning portal.

5. Monitoring and review of a planning agreement –

Council will continuously monitor the performance of the developer's obligations under a planning agreement and report them to the community in accordance with the Act and Regulation. Council is also required to report on the Planning Agreement Register as part of Council's annual report.

STEP 6 – Implementation of a planning agreement



Each planning agreement is developed individually to best deliver the planning benefit to the community. The developer is responsible for implementing the planning agreement in association with the development.

There are also a number of processes that may be initiated at the developer's request or as a function of a development application or planning proposal. Some of the more common additions are listed below:

- **Monetary contribution invoice –**

The planning agreement will outline the timing for contributions. Council will raise and issue invoices for monetary contributions when the developer informs Council that development has progressed to contribution trigger points.

- **Subsequent evidence satisfactory arrangements –**

Subsequent evidence of satisfactory arrangements may be requested by Council from the developer:

- if a developer lodges a second development application for development;

- in staged developments, where a development application is lodged for a subsequent phase of development; or,
- if a developer modifies a development application for development of the site identified in the development application which initiated the original planning agreement process.
- Subsequent requests from Council for evidence of satisfactory arrangements, follow the process outlined in Stage 5.

- **Amendment of a planning agreement –**

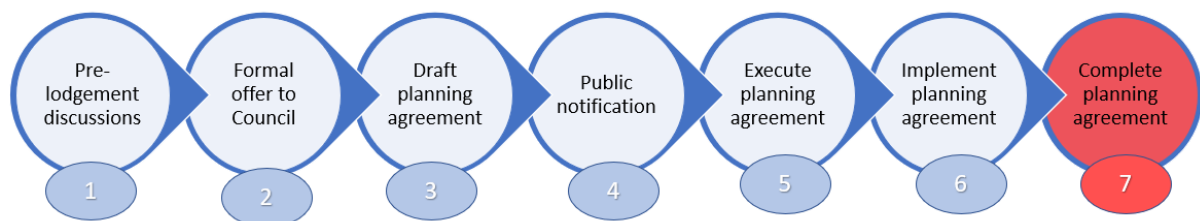
If a developer requests that a planning agreement be amended following execution, Council will consider this request. This process follows the same pathway as the consideration, drafting and notification processes of the initial planning agreement (Stages 2, 3 and 4).

- **Novating the planning agreement to another party –**

Where a signatory to a planning agreement seeks to assign the obligations or transfer the land (for example, through the sale of the land) to another party, a deed of novation to the planning agreement must be prepared. The developer can initiate this process by emailing Council. The email notice should then be followed by a formal letter seeking the consent of Council to the assignment of obligations and/or transfer of the land. Annexure E provides guidance on what is to be included in the formal letter.

Council will then prepare a deed of novation, which will be issued for signing by both the outgoing and incoming parties. If Council is satisfied that the requisite conditions have been met, including provision of a replacement bank guarantee and payment of Council's costs (where relevant), it can execute the deed of novation.

STEP 7 – Complete a Planning agreement



If the developer seeks to remove the planning agreement from the title of the land, the developer must evidence that their obligations under the agreement have been met.

The developer is responsible for completing all obligations of the planning agreement. If Council is satisfied that the developer has fulfilled its obligations under the planning agreement relating to that land, the release from title and return of securities will be permitted.

If all obligations under the planning agreement have been met, Council will consider the planning agreement to have been concluded and Council will update its status on the Planning Agreement Register to reflect this. The register is available on Council's website. Council will also make arrangements to update its internal systems including mapping and planning certificate information.

4. REVIEW AND REVISION

This procedure is to be reviewed every 4 years (or when required as a result of changes to legislation or Council operations).

5. RESPONSIBLE OFFICER/DEPARTMENT/SECTION

- Planning agreement associated with a planning proposal:
 - Land Use Planning Department
- Planning agreement associated with a development application:
 - Development Assessment Department
- Stand-alone planning agreement:
 - Determined by the purpose of the planning agreement.

6. DEFINITIONS

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| Act | Means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> . |
| Development application | Has the same meaning as in the Act: development application means an application for consent under Part 4 to carry out development but does not include an application for a complying development certificate. |
| Development consent | Has the same meaning as in the Act: development consent means consent under Part 4 to carry out development and includes, unless expressly excluded, a complying development certificate. |
| Contributions Plan | Means an adopted plan of Council made in accordance with the Act (section 7.18 at the time of writing this policy). |
| LEP Amendment | Means a change to a local environmental planning instrument to enable a development application to be made to carry out development (rezoning). |
| Planning benefit | The benefit enjoyed by the community from the delivery of public infrastructure, services or other provisions that supports the community as a result of development. |
| Planning Agreement / the Agreement | Has the same meaning as section 7.4 of the Act: <i>A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer)—</i> <i>a) who has sought a change to an environmental planning instrument, or</i> <i>b) who has made, or proposes to make, a development application or application for a complying development certificate, or</i> <i>c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,</i> <i>under which the developer is 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.</i> |
| Planning proposal | Has the same meaning as the Department of Planning, Industry and Environment’s Local Environmental Plan Making Guideline: Planning proposal means a document and supporting information that explains the intended effect and justification of a proposed LEP or amendment to an LEP. |
| Regulation | Means the <i>Environmental Planning and Assessment Regulation 2021 (NSW)</i> . |

7. ATTACHMENTS

APPENDIX A INFORMATION TO BE PROVIDED ON A STAND-ALONE PLANNING AGREEMENT PRIOR TO A PRE-LODGEMENT MEETING WITH COUNCIL

APPENDIX B ACCEPTABILITY TEST

APPENDIX C MONETARY MATTERS

APPENDIX D FORMAL OFFER TO COUNCIL TO ENTER INTO A PLANNING AGREEMENT

APPENDIX E FORMAL LETTER TO COUNCIL REQUESTING NOVATING THE PLANNING AGREEMENT TO ANOTHER PARTY

APPENDIX A INFORMATION TO BE PROVIDED ON A STAND-ALONE PLANNING AGREEMENT PRIOR TO A PRE-LODGEMENT MEETING WITH COUNCIL

Prior to a pre-lodgement meeting, the Developer will need to provide as much detail to Council as possible about the planning agreement. This information may include:

1. Details of any associated land (Lot and DP references), ownership details and any possible land transfers or purchase options;
2. Details of any previous associated development applications or planning proposals including;
 - a) reference numbers of any previous approvals,
 - b) a general description of the development outcome, and
 - c) what stage the development is up to.
3. Proposed parties to the planning agreement;
4. The type of contribution(s) to be provided – this may take the form of monetary contribution, works-in-kind and/or land dedication;
5. Timeframes or development triggers for when the contributions are to be provided;
6. A written description of any specific issues you would like discussed or clarified at the pre-lodgement meeting.

APPENDIX B ACCEPTABILITY TEST

Council will be guided by an acceptability test when negotiating a planning agreement. The acceptability test may include, but not be limited to, whether the planning agreement:

The Planning agreement:

1. is consistent with adopted Council's Planning Agreement Policy, and other related documents such as, applicable Legislation, Regulations, Practice Notes or Guidelines;
2. is directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development;
3. meets the demand created by the development for new public infrastructure, amenities and services not already provided for in Council's existing contribution plans;
4. provide the delivery of infrastructure or public benefits not wholly unrelated to the development;
5. is meeting existing deficiency in the existing provision of public facilities in the Council's area;
6. produces outcomes that meet the general values and expectations of the public and protect the overall public interest;
7. provides for a reasonable means of achieving the desired outcomes and securing the benefits;
8. protects the community against adverse planning decisions;
9. whether recurrent funding of public facilities and/or public benefit is required or provided;
10. the extent to which the Council needs to monitor the planning impacts of development;
11. whether planning benefits for the wider community accrue from the planning agreement;
12. implementation of the planning benefit is clear and provides for matters such as:
 - a) The timetable for provision of planning obligations under the planning agreement.
 - b) The design, technical specification and standard of any work required by the Planning agreement to be undertaken by the developer.
 - c) The manner in which work is to be handed over to the council.
 - d) The manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

APPENDIX C MONETARY MATTERS

1. Methodology for value of public benefits

The valuation of the public benefits to be provided under a planning agreement are an important component of any such agreement. There are numerous methods of determining such values and the methodologies for valuing the public benefits set out in this section are to be used as a general guide only. Accordingly, Council is not bound to follow such methodologies but may elect to do so on a case by case basis.

- a) Where a public benefit to be provided under a planning agreement is the dedication of land for a public purpose by the developer, Council may seek to value the benefit on the basis of the estimated amount of compensation to which the developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) upon the compulsory acquisition of the land or by engaging an independent valuer.
- b) Where a public benefit to be provided under a planning agreement is the carrying out of works for a public purpose, Council will generally seek to value the benefit on the basis of the estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.
- c) Where a public benefit to be provided under a planning agreement is the provision of a material public benefit other than the carrying out of works, Council and the developer will negotiate the most appropriate manner by which the benefit is to be valued for the purposes of the agreement.
- d) Council will generally adopt the following approach to valuation of benefits in connection with any planning agreement:
 - i. the value of a benefit must be provided by the developer at an appropriate time, together with a written verification of that valuation by an appropriately qualified independent expert; and
 - ii. Council may review the valuation, including by engaging an independent expert and Council's costs incurred in connection with such review may also need to be borne by the developer.
- e) Council will generally seek to ensure that monetary contributions required to be paid under a planning agreement are increased by reference to an appropriate index (such as the consumer price index) from the time of the formation of the planning agreement until the relevant monetary contribution is paid.

2. Provision of security under a planning agreement

The Council will generally require a planning agreement to make provision for security to cover the developer's obligations under the planning agreement. A form of security will generally be an unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's obligations under the Agreement and on terms otherwise acceptable to the Council.

3. Recurrent charges

- a) Planning agreements may require a developer to make contributions towards the recurrent cost of public facilities, services or programs.
- b) The nature and extent of any recurrent charges will be determined on a case by case basis; however, the following general principles will apply:
 - i. Where the public facility primarily serves the development to which the planning agreement relates, or neighbouring development, the arrangement for recurrent funding may be in perpetuity.
 - ii. Where the public benefit is intended to serve the wider community, the planning agreement may require the developer to make contributions towards the recurrent

costs of the facility for a set period only which will be negotiated according to the assessed impact of the development.

4. Pooling of monetary contributions

Pooling of monetary contributions paid under different planning agreements may be appropriate to allow public benefits, particularly essential infrastructure and ongoing services, to be provided in a fair and equitable way. A planning agreement may therefore provide for the payment of monetary contributions to be provided by the developer with the intention that those contributions be pooled with others received by Council. In such an instance, Council may seek to include a provision in the planning agreement which permits:

- a) money paid under the planning agreement to be pooled with money paid under other planning agreements; and
- b) for that money to be applied progressively and for different purposes under those agreements.

If significant pooling is required, Council may consider if an infrastructure contributions plan would be appropriate.

5. Refunds and credits

Council generally will not agree to making a refund of, or providing any credits with respect to, any contributions provided under;

1. a planning agreement providing for the surplus value of the public benefits provided under a planning agreement to be refunded to the developer; or
2. a planning agreement providing for the surplus value of the public benefits provided under a planning agreement to be offset against local infrastructure contributions required to be made by the developer in respect of any further development, including in circumstances where the value of the material public benefits provided under a planning agreement exceed the value of the contributions that would otherwise have been required to be paid under the relevant s7.11 or 7.12 contribution.

APPENDIX D FORMAL OFFER TO COUNCIL TO ENTER INTO A PLANNING AGREEMENT

1. The Act does not define what constitutes an 'offer' for the purpose of section 7.7(3) of the Act. However, at a minimum, an offer should:
 - a) Be in writing.
 - b) Be addressed to the Council.
 - c) Be signed by or on behalf of all parties to the proposed planning agreement other than the Council.
 - d) Outline in enough detail the matters required to be included in a planning agreement as specified in s7.4(3) of the Act to allow proper consideration of the offer by the Council.
 - e) Outline in enough detail of the key terms and conditions proposed to be contained in the planning agreement to allow proper consideration by the Council.
2. Council cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement. However, if a developer has offered to enter into a planning agreement in connection with a development application or a change to an environmental planning instrument, then a consent authority is authorised to require a planning agreement to be entered into in the terms of the offer as a condition of development consent.
3. As part of the formal offer to Council to enter into a planning agreement, all parties to the proposed planning agreement other than the Council should clearly identify their intention to register the planning agreement on the title.

APPENDIX E FORMAL LETTER TO COUNCIL REQUESTING NOVATING THE PLANNING AGREEMENT TO ANOTHER PARTY

The letter should include, but not be limited by:

- confirmation that the incoming party (or outgoing party, if agreed between the parties) will pay Council's costs; and,
- the incoming party's contact details.
- the following information and documents should be submitted with the formal letter:
 - a) copies of land transfers or sale option agreements;
 - b) confirmation that the incoming party has enough assets, resources and expertise to discharge the developer's obligations under the planning agreement;
 - c) a copy of the trust deed (if the incoming party is a trustee company); and
 - d) a replacement bank guarantee (where applicable).