



**CITY OF
PARRAMATTA**

**Planning Agreement Policy
(Amendment 2) – 2026**

City of Parramatta Council

Adopted by Council [insert]

[Nov Version]

Version Control

Version	Adopted by Council	Came into Effect	Notes
Original	25 February 2008 (Parramatta City Council)	3 March 2008	Implementation of VPA Policy
Amendment 1	26 November 2018 (City of Parramatta Council)	26 November 2018	City of Parramatta Planning Agreements Policy (Amendment 1)
Amendment 2	2026	2026	City of Parramatta Planning Agreements Policy (Amendment 2)

Administration

City of Parramatta Planning agreements Policy		
Owner: Group Manager Infrastructure Planning & Design	Area: Infrastructure Planning & Design	POL No: 291
Date of Commencement: 26 November 2018	Approval Authority: Council	Date Approved: 26 November 2018
Amendment 1	Date of Review: February 2026	Review: 4
Amendment 2	Date of Next Review: 2030	

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1. BACKGROUND

1.1 Name of this policy

This policy is known as the City of Parramatta Council planning agreements Policy or planning agreements Policy ("the Policy").

1.2 About this policy

This Policy outlines Council's approach to the negotiation of planning agreements when utilised in relation to planning proposals, development applications or complying development certificates within the City of Parramatta Local Government Area ("the LGA") under the Act.

1.3 Application of the policy and commencement

This Policy applies to all planning agreements proposed or entered into by City of Parramatta Council ("Council"), and applies to all land in the LGA, including any land owned by the Council. This Policy, to the fullest extent possible, also applies to land outside of the City of Parramatta LGA in the case of a joint planning agreement between Council and another council or consent authority which applies in part to land outside the City of Parramatta LGA.

This Policy was adopted by resolution of the Council on [insert date] and became effective on [insert date].

1.4 Purpose and objectives of this policy

The purpose of this Policy is to provide a framework and procedures to guide developers and Council in the preparation of planning agreements under Part 7, Division 7.1 Subdivision 2 of the Act and the accompanying Practice Note. It ensures transparency, fairness, and accountability in the negotiation, preparation, and implementation of planning agreements while outlining the expected public benefits.

The objectives of this policy are to:

- (a) provide clarity on when a planning agreement may be entered into with Council and the process for assessing its appropriateness;
- (b) establish a fair, transparent, and consistent framework for negotiating, preparing, and administering planning agreements;
- (c) ensure a robust probity framework for all aspects of planning agreements;
- (d) broaden the range and extent of public benefits delivered through development supplementing contributions under sections 7.11 and 7.12 of the Act;
- (e) provide certainty for developers regarding Council's expectations and preferred agreement terms;
- (f) facilitate public participation and community understanding of planning agreements;
- (g) promote flexible, innovative approaches to planning and infrastructure provision while ensuring public benefits;
- (h) include affordable housing as a potential component of planning agreement contributions;
- (i) simplify the process for making minor amendments to executed agreements;
- (j) set out requirements for land and infrastructure dedication, valuation methodologies, and the pooling of funds for public benefits, and
- (k) outline administration procedures, including review, modification, enforcement, dispute resolution, and cost recovery.

Where a developer proposes a planning agreement it must be supported by satisfactory information identifying the scope of infrastructure needed to support the development and surrounding area.

The planning agreement must address the mandatory provisions of a planning agreement set out in the Act (refer to Section 2.7 of this Policy).

2 PROCEDURAL AND POLICY CONTEXT OF PLANNING AGREEMENTS

2.1 Legal and policy context

The current legal framework for planning agreements is set by Part 7, Division 7.1 of the Act and Part 9, Division 1 of the Regulation.

This Policy has been guided by the following:

- (a) Local Planning Agreements Practice Note – May 2025 Published by NSW Department of Planning Housing and Infrastructure;
- (b) The Development Assessment Internal Audit Tool, Independent Commission Against Corruption (2010);
- (c) The Submission to the Draft Voluntary Planning Agreement Policy, IPART (December 2016);
- (d) Direct Negotiations – Guidelines for Managing Risks, Independent Commission Against Corruption (August 2018);
- (e) Economic Advice on Value Sharing for Planning Agreements, SGS Economics and Planning (August 2017);
- (f) Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2021;
- (g) Environmental Planning and Assessment (Planning Agreements) Direction 2018 dated 28 February 2019;
- (h) Council's Code of Conduct approved 22 February 2021;
- (i) Council's Land Dedication Policy approved 25 March 2024, and
- (j) Council's Business Ethics Policy approved 15 June 2021.

In applying this Policy, Council will consider the most recent directions issued by the Minister under section 7.9 of the Act and the most recent practice notes issued by the Planning Secretary under clause 203(6) of the Regulation, to the extent they are not described above.

The Policy sets out Council's preferred arrangements to improve certainty for developers, though as noted in the Policy other arrangements will be considered on a case-by-case basis.

2.2 Probity and Governance

The Council's Business Ethics Policy prioritises public probity, ensuring integrity and accountability in the planning agreement system. Negotiations and implementations of planning agreements are conducted transparently and fairly, aiming to achieve public benefits without conflicts of interest or misadministration. Additionally, Council is committed to practicing justice and managing potential conflicts of interest effectively.

To manage the potential for conflict of interest and ensure transparency and good governance, Council will ensure the definition and separation of roles and responsibilities between the negotiation of the planning agreement and the assessment of the associated development application or planning proposal. This will be supported by good record keeping of decision making and monitoring of the end-to-end process. In this regard, Council will:

- (a) comply at all times with the requirements of the Act and Regulation in respect of planning agreements, and in particular the requirements for public notification of a planning agreement;
- (b) provide a copy of this Policy to any person who seeks to enter into a planning agreement with Council;
- (c) publish this Policy on Council's website and promote the general awareness of this Policy;
- (d) comply with public notification requirements in the Act;
- (e) comply with the Council's Code of Conduct;
- (f) inform any applicant as required about Council values, Code of Conduct, and Business Ethics Policy – specifically, about ethical behaviour appropriate to business dealings;
- (g) ensure that Council staff and Councillors understand the circumstances in which planning agreements are appropriate;
- (h) ensure that Councillors and Council staff understand their particular role and responsibility, some of which carry the potential for conflicts of interest;
- (i) require independent negotiation and assessment where appropriate to ensure probity and avoid conflicts of interest;
- (j) ensure that modifications to approved development should be subject to the same scrutiny as the original development application, and
- (k) ensure that Councillors are not involved in any direct negotiations (whether in person, by telephone, through correspondence, or other direct means) with a developer during the period of the negotiation. However it is recognised that in their role as Councillors they will ultimately endorse and approve the planning agreement by resolution to exhibit and execute the agreement.

2.3 Relationship to payment of section 7.11 and section 7.12 contributions

Planning agreements provide an additional opportunity for Council to achieve the delivery of infrastructure needed to service the community. Deliverables achieved via a planning agreement should be generally consistent with infrastructure priorities identified in Council's development contribution plans and other infrastructure delivery plans.

This does not mean that deliverables offered under planning agreements can only be for the infrastructure or public amenities and services specified in those plans. Planning agreements provide additional flexibility to deliver items that are not identified in a contributions plan, and in certain circumstances may achieve delivery of higher priority projects that were not identified at the time the contributions plan or infrastructure delivery plan was created.

Acceptance of any infrastructure works not identified in Council's existing development contribution plans and/or other infrastructure delivery plans will be considered on a case-by-case basis, having regard to the particular development application or instrument change and the local urban context.

Section 7.4 of the Act provides that a planning agreement may wholly or partly exclude the application of section 7.11 or section 7.12 of the Act to development in certain circumstances. Council will not agree to the benefits under a planning agreement being taken into consideration in determining a development contribution under section 7.11 or 7.12 of the Act.

Planning agreements which are proposed as a mechanism to deliver works as a public benefit in lieu of payment of section 7.11 or section 7.12 development contributions, which are required by an existing condition of development consent granted prior to the preparation of the planning agreement, will only be considered where the development contribution value exceeds \$500,000.00, or otherwise at the discretion of Council.

2.4 Corporate planning context

The use of planning agreements is one of the ways in which projects and actions contained in the Council's integrated planning and reporting framework may be implemented.

In negotiating planning agreements and establishing the type of public facilities to be included in an agreement, all parties should take into consideration Council's integrated planning and reporting framework, in particular, the strategic planning priorities and infrastructure needs for the City of Parramatta, to ensure a comprehensive and coordinated approach to infrastructure funding and delivery.

2.5 Principles underlying negotiation of a planning agreement with Council

Council's use of planning agreements will be governed by the following principles:

- (a) Council will always consider a development proposal on its merits, not based on a planning agreement. Planning decisions will not be bought or sold through planning agreements. Development that is unacceptable on planning grounds will not be permitted due to the public benefits offered in a planning agreement. The agreement must be for a proper planning purpose;
- (b) planning agreements will be negotiated by Council where a development exceeds the existing development controls, thereby providing an additional benefit to the developer;
- (c) Council will not allow the deliverables to the community and public benefit derived from a planning agreement to offset or reduce in any way the applicable development contributions payable by the developer under section 7.11 or section 7.12 of the Act. Section 7.11 and section 7.12 contributions are to support the infrastructure needs of existing and incoming residents and workers. Planning agreement deliverables are based on development uplift and are over and above section 7.11 and section 7.12 contributions;
- (d) the outcomes of planning agreements should not be inconsistent with the relevant strategies, plans and policies of Council, without documented extenuating circumstances;
- (e) planning agreements should provide for public benefits that have some relationship to the development. Planning agreements must not include public benefits wholly unrelated to the planning and urban context of the locality;

- (f) Council will not allow the interests of individuals or private interest groups to outweigh the public interest when considering a planning agreement;
- (g) where Council has a commercial interest in development the subject of a planning agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development;
- (h) Council will not agree to a planning agreement which provides for alleged surplus value or additional costs incurred by the developer being refunded to the developer; or being used to offset against section 7.11 contributions or section 7.12 levies required to be made by the developer, unless as a result of a change in scope and amendment of the planning agreement;
- (i) planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls, and
- (j) value capture should not be the primary purpose of a planning agreement.

2.6 When may Council enter into a planning agreement

Council will negotiate and enter into a planning agreement at its discretion in circumstances where:

- (a) the developer:
 - (i) seeks to change or vary the provisions of a local environmental plan, and/or
 - (ii) has made, or proposes to make, a development application or an application for a complying development certificate,
 and
- (b) the developer has made an offer in writing to enter into a planning agreement and the terms of letter of offer and the planning agreement are consistent.

In exercising its discretion the Council will have regard to the following:

- (a) the extent to which the planning agreement may mitigate or compensate for the impact of development;
- (b) whether the infrastructure works proposed in the planning agreement are identified in an adopted contributions plan, Council's infrastructure works program, or other Council policy or strategy, or if not so identified will contribute to a public benefit for the wider community;
- (c) whether the asset or benefit to be delivered would not otherwise be secured by a condition of a development consent imposed in accordance with section 4.17 of the Act, (Council will not attribute any value under a planning agreement to works or land dedication that would otherwise be required by a condition of development consent), and
- (d) whether in light of the circumstances generally the planning agreement will provide a positive social, environmental and economic outcome for the community, and where planning agreement assets and/or deliverables will provide a public benefit.

While this Policy primarily applies to proposals assessed and determined by Council, Council acknowledges that some developments, including State Significant Development Applications (SSDAs) and matters referred to the Housing Delivery Authority (HDA), may be assessed by state agencies or regional panels. In such cases, Council may not be the consent authority but may still seek to negotiate

a planning agreement where the proposed development has implications for local infrastructure delivery or public benefit.

Council encourages early engagement from proponents of SSDAs and HDA applications to ensure any potential planning agreement is considered in parallel with the assessment process, subject to the agreement of the relevant planning authority.

2.7 Mandatory requirements of a planning agreement

Section 7.4(3) of the Act requires that a planning agreement must provide for the following:

- (a) a description of the land to which the agreement applies;
- (b) a description of—
 - (i) the change to the environmental planning instrument to which the agreement applies, or
 - (ii) the development to which the agreement applies;
- (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made;
- (d) for development—whether the agreement wholly or partly excludes the application of the following provisions—
 - (i) section 7.11,
 - (ii) section 7.12,
 - (iii) Division 7.1, Subdivision 4;
- (e) if the agreement does not exclude the application of section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11;
- (f) a mechanism for the resolution of disputes under the agreement, and
- (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

A planning agreement must contain a time, or times, by which each contribution provided under the planning agreement must be provided. The timing of the provision of each contribution must be acceptable to Council to ensure that the public need for the relevant item is satisfactorily met.

Suitable means for the enforcement of the agreement are generally set out in Council's template referred to at Appendix A, noting that given the wide range of obligations that a planning agreement may impose on a developer, there are a variety of mechanisms for enforcement that may be suitable in concert.

Suitability is assessed by Council with reference to whether the means of enforcement is likely to eliminate or reduce to a commercially acceptable level the risk that the obligation created by the planning agreement will not be performed and that the planning authority or the community will not receive the intended benefits. Council's assessment takes into account the commercial context in

which the planning agreement is to operate, including the capacity of the developer to comply with the relevant obligation, and the likely effectiveness of the means of enforcement.

2.8 Template agreement

A planning agreement will be in writing and must be based on the Council's template at **Appendix A**, and available on Council's website. The developer must justify any changes to the template agreement, preferably through prior agreement.

2.9 Explanatory note

Clause 205 of the Regulation requires an Explanatory Note to be exhibited with each proposed planning agreement. The explanatory note must:

- (a) summarise the objectives, nature, and effect of the proposed agreement, amendment or revocation, and
- (b) contain an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public.

The Explanatory Note must be exhibited with the copy of the proposed agreement, amendment or revocation when it is made publicly available in accordance with the Act.

The Explanatory Note must be prepared jointly by the parties proposing to enter into the planning agreement. The specific terms of each Explanatory Note will depend on the terms of the planning agreement to which it relates. Council's Explanatory Note template is included at **Appendix B**.

3 MATTERS COUNCIL MAY CONSIDER WHEN NEGOTIATING AND ENTERING INTO PLANNING AGREEMENTS

3.1 Matters Council may consider in negotiations

The matters that Council may consider in negotiations of planning agreements may include, but are not limited to, the following:

- (a) whether the planning agreement delivers a public purpose as defined by Section 7.4(2) of the Act;
- (b) whether the contributions offered satisfy a community need, provide community benefit and align with Council's corporate strategic documents, existing development contribution plans or other infrastructure delivery documents or Policies adopted by Council, or any infrastructure needs identified in any relevant regional or district plan;
- (c) whether the contributions offered can be achieved via an alternate mechanism such as a condition of development consent;
- (d) whether the proposed planning agreement and the contributions offered meet the demands created by the development on existing or for new public infrastructure, amenities, and services;
- (e) what impact the proposed contributions offered will have on Council's asset management strategy, including the ongoing operational, maintenance, and renewal costs of unplanned infrastructure being dedicated to Council;

- (f) whether the planning agreement contribution under the proposed planning agreement would provide compensation for the loss of, or damage to, a public amenity, service, resource or asset caused by the development, through its replacement, substitution, repair or regeneration;
- (g) whether the contribution offered under the proposed planning agreement would achieve the provision of affordable housing and, if so, where the planning agreement is in connection with a development application or proposed development application, the Council will consider the matters identified in section 5(2) of the *Environmental Planning and Assessment (Planning Agreements) Direction 2019*;
- (h) whether there are any relevant circumstances that may operate to preclude Council from entering into the proposed planning agreement or accepting the contributions offered;
- (i) whether the proposed planning agreement satisfies the principles for using a planning agreement contained in this Policy, and
- (j) any conflicts which may exist with another planning agreement or development consent applying to the relevant land.

3.2 Acceptability test to be applied to all planning agreements

Council will assess the acceptability of the planning agreement against the following test.

Council will ensure the planning agreement:

- (a) is directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to the planning proposal/development;
- (b) provides for the delivery of infrastructure or public benefits not wholly unrelated to the planning proposal/development;
- (c) produces outcomes that meet the general values and expectations of the public and protect the overall public interest;
- (d) provides for a reasonable means of achieving the desired outcomes and securing the benefits, and
- (e) protects the community against adverse planning decisions.

Notwithstanding the above, Council is not obliged to enter into a planning agreement with a developer and may do so at its absolute discretion.

Council will apply the additional principles:

- Council should always consider a development proposal on its merits, not based on a planning agreement;
- planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls, and
- value capture should not be the primary purpose of a planning agreement.

3.3 Types of contributions and benefits

Planning agreements may require the dedication of land to Council, the payment of money to Council, or the provision of some other material public benefit (or a combination of these three things) to be used for or applied towards a public purpose. Council's policy on the types of contributions and public benefits that can be negotiated or required in planning agreements is explained below. These matters are not intended to be exhaustive, and are negotiated on a case-by-case basis

- (a) 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;
- (b) planning agreements may require development contributions towards the recurrent costs of public facilities or services that primarily service 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 cost of the facility or service;
- (c) planning agreements may provide that money received under the terms of the agreement can be pooled by Council and applied progressively toward infrastructure. Planning agreements will include a provision setting out such intention in these instances;
- (d) planning agreement may require the delivery of infrastructure required directly as a result of density increases experienced or expected from the redevelopment of a site, for example due to changes in development controls arising from a planning proposal;
- (e) public benefits required or negotiated under a planning agreement may include: infrastructure, social, economic, environmental, educational, cultural or other benefits as Council deems beneficial to the public, and
- (f) deliverables required or negotiated under a planning agreement to deliver public benefits may include items such as (but not limited to) affordable housing, dedication and embellishment of open space, active transport infrastructure, community facilities, local renewable energy, local reuse and recycling infrastructure, community gardens, public art, cultural and recreational activities infrastructure.

3.4 Land dedication

New urban development creates the need for additional public amenities and public services. A planning agreement may make provision for the dedication of land. Any offer to dedicate land to Council must meet the requirements of Council's Land Dedication Policy approved 25 March 2024 (as amended from time to time).

3.5 Affordable housing contribution

Council recognises the need for affordable housing in the LGA and has demonstrated its commitment to affordable housing for the community through relevant strategies and policies, in partnership with State and Federal Governments.

Council has adopted its Affordable Rental Housing Policy 2024 and Affordable Housing Action Plan 2023-2025 to provide a framework for the delivery of City of Parramatta affordable rental housing needs.

To maximise positive outcomes for the community, planning agreements should be based on a needs assessment with a long-term outlook for infrastructure planning.

Council will continue to utilise planning agreements to acquire future affordable rental housing, as anticipated by section 7.4(2)(b) and (d) of the Act and sections 15C(2), 156(3) and (4) of the State Environmental Planning Policy (Housing) 2021. Planning agreements may provide for the dedication of affordable rental housing to Council, where appropriate, based on site-specific assessment and alignment with Council's strategic housing objectives. The principles and processes by which this determination is made and carried out are set out below.

Dwellings that are acquired through planning agreements or any other planning system mechanism must comply with the following access and design outcomes:

- affordable housing should be at 'no cost' to Council and be provided in perpetuity;
- dwellings to be dedicated to Council must provide a suitable mix of smaller and larger units for families;
- dwellings to be dedicated to Council are subject to the same design requirements and controls as all other dwellings within a development site. This includes design outcomes and characteristics such as solar access, cross-ventilation and universal design;
- the percentage of adaptable units is to be consistent with the applicable development control plan. The design of adaptable units is to be bespoke (not a conventional unit with adaptable spaces inserted within and around that design), and
- allocation of car spaces for affordable rental housing dwellings is to be consistent with the car parking requirements in the relevant planning controls.

3.6 Capital works

A planning agreement may make provision for a developer to carry out work on land in the public domain or land to be dedicated to the Council. Council will instruct a qualified quantity surveyor (at the cost of the developer) to verify all cost estimates submitted by the developer as part of the negotiation process. Additionally, Council's review or contribution to the scoping and design of the infrastructure will also be at the developer's cost.

The planning agreement will specify the particulars of the work and the procedure for satisfying any requirements in carrying out of the work, taking into account any unique circumstances or characteristics of the property. These particulars may include:

- requirements and specifications for detailed design plans for future approval, or specific references to endorsed plans;
- details of the defect's liability period;
- public liability insurance during construction and during the subsequent defect's liability period;
- requirements for inspection by Council prior to and during the course of construction including the notice to be given in order to arrange such an inspection;
- security such as bank guarantees to be held during the course of construction and the defects liability period to ensure the completion of public works and the protection of public assets. These guarantees must cover potential risks, including developer insolvency, ensuring that Council can access necessary funds to complete or rectify outstanding works;
- access for Council staff during the course of construction to ascertain progress or to assess asset value, and
- any other matter relevant to ensuring the enforcement of the agreement so as to ensure a quality public benefit is delivered in the public interest.

3.7 Recurrent charges & maintenance costs

Where a planning agreement proposes works or dedication of land and/or building assets, the developer may be required to provide supporting documentation outlining the lifecycle costs to Council, including operation or ongoing service delivery, as well as likely maintenance and replacement costs. This information will assist Council in determining whether to accept a planning agreement offer, please refer to Council's Land Dedication Policy approved 25 March 2024 (as amended from time to time).

All planning agreements that involve the provision of public infrastructure through works to be carried out by the developer may include a reasonable contribution towards ongoing maintenance and replacement costs of the infrastructure, for a period agreed between the parties, determined on a case-by-case basis.

Where the public infrastructure primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity. Where the public infrastructure or public benefit is intended to serve the wider community, the planning agreement may, where appropriate, only require the developer to make contributions towards the recurrent costs of the facility for a set period, which will be negotiated according to the impact of the development.

The amount of any monetary contribution acceptable to Council will depend on the type and value of the works being handed over, whether repair and maintenance are likely to be required and the anticipated cost of maintenance, repair and renewal works.

If the developer is to maintain works after practical completion, a bank guarantee will be required by Council to cover the likely maintenance in the event the developer defaults.

4 METHODOLOGY FOR VALUING PUBLIC BENEFITS UNDER A PLANNING AGREEMENT

4.1 Determination of benefit value

The value of benefits proposed under a planning agreement will be determined prior to the agreement being publicly notified. The value of planning agreement deliverables must be consistent with the provisions of any relevant planning instrument (including a draft instrument) and development control plan.

To ensure that public benefits provided under planning agreements are directed towards appropriate and legitimate planning purposes, unless otherwise agreed in a particular case, planning agreement contributions will be valued as follows:

- (a) in the case of the dedication of land for a public purpose regardless of classification under the *Local Government Act 1993*, the Council will attribute a nominal value of one (1) dollar to the land. Unless otherwise agreed, all benefits under a planning agreement will be dedicated at no cost to Council and free of all and any encumbrances;
- (b) in any other case, the value of land to be dedicated will be determined by an independent valuer or registered quantity surveyor who is experienced in valuing works in New South Wales (and who is acceptable to Council), on the basis of a scope of work which is prepared by Council. All costs of the independent valuer/registered quantity surveyor will be borne by the developer;

- (c) where construction or embellishment works are to be undertaken to satisfactorily deliver a public benefit, including in conjunction with land dedication/transfer, the developer will provide a cost of works estimate prepared by a suitably qualified Quantity Surveyor, which Council may have peer reviewed at the cost of the developer. The final cost of works will be Council's decision;
- (d) in the case of dedication of dwelling units for affordable housing, the value to be attributed will be based on a market analysis of comparable sales in the previous 12 months or such other period determined by Council, considering any other deliverables in connection with the transfer of the unit(s);
- (e) in the case of any other type of benefit, Council may, at its discretion, consult with the developer and apply an appropriate methodology to determine the value to be attributed to those benefits;
- (f) in the event that a planning agreement proposes works and services that would normally be provided as a condition of development consent, then those works and services will be deemed to have no value under the planning agreement, and
- (g) in assessing the value to the community of community facilities or public spaces proposed in a planning agreement, Council will consider the criteria for location, tenure, function, size and operation in the context of best practice guidelines in relevant Council studies, policies and strategies on community, open space and recreational needs.

4.2 Consideration of planning agreement contributions

When considering the value or appropriateness of a planning agreement contribution, Council will take into account all circumstances of the particular case, including:

- (a) whether any housing and productivity contributions are (or are to be) levied in connection with the proposed development or planning proposal, as required by the State Government or as directed by the Minister;
- (b) where the applicant is willing to participate in an open book analysis process or discuss any other matters that affect project viability specifically as a result of the planning agreement, excluding any financial contribution under (a);
- (c) where applicable any requirement of Council's adopted Affordable Housing Policy, and
- (d) where applicable any delivery of infrastructure works free of cost, including any contribution towards ongoing maintenance of those works.

"Open book analysis process" means a procedure used by Council to review the likely costs, feasibility analysis and profitability of a proposed development based on documents provided by the developer.

Any documents provided by a developer for an open book analysis will be treated as 'commercial in confidence'. Where necessary an independent arbitrator should be jointly appointed by Council and the developer to resolve any disputes with regard to the open book analysis.

For the avoidance of doubt, Council will not consider any section 7.11, 7.12 or 7.24 monetary development contributions as part of the matters addressed under this clause.

4.3 Monetary contributions and pooling of contributions

A planning agreement may make provision for a monetary contribution other than a contribution required under an adopted and in-force contributions plan. Such a contribution may be used to supplement funding for a project identified in a section 7.11 or 7.12 plan or as resolved by Council, allowing for more timely or enhanced delivery of public benefits. The terms of any monetary contribution under a planning agreement will be negotiated as part of the agreement. However, no credit or offset will be applied against a developer's existing section 7.11 or 7.12 contributions requirement.

The following matters are to be addressed:

- (a) the amount of the monetary contribution;
- (b) the purpose and extent of the monetary contribution;
- (c) the timing of payments;
- (d) in the case of staged payments, the staging details or payment schedule;
- (e) any mechanisms for the indexing of the monetary contribution against inflation over time;
- (f) details of any security that is to be provided in lieu of the monetary contribution until it becomes due and payable;
- (g) any obligations on Council for the expenditure of the monetary contributions, and
- (h) any other matter relevant to securing the public interest in managing and expending the monetary contributions.

4.4 Indexation of contribution values and security

Monetary contributions, and the value of works (design and construction) and land, required to be provided under a planning agreement are subject to indexation to reflect increases in the consumer price index ("CPI") between the execution of the agreement and timing of payment(s) or provision of the development contribution. The CPI used is the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Indexation is to be undertaken in accordance with the formula:

$$\text{Amount} = \text{Contribution (stated in agreement)} \times \frac{\text{CPI at the date of payment/delivery}}{\text{CPI at the date of agreement}}$$

Securities such as bank guarantees required under a planning agreement will also be subject to annual indexation requirements.

5 NEGOTIATION PROCEDURES

5.1 General

Council's negotiation approach for planning agreements aims to be efficient, predictable, transparent and accountable. Council will seek to ensure that the final negotiation of planning agreements runs in parallel with planning proposals for instrument changes or development applications so as not to unduly delay any approval.

It is therefore preferable that a planning agreement is discussed with Council before lodgement of the relevant proposal or application and that it accompanies the proposal or application on lodgement.

Once the terms in the letter of offer are negotiated, a draft planning agreement and explanatory note can be prepared and lodged with Council. The letter of offer should be consistent with the draft planning agreement and explanatory note. It should be updated, if required. In the case of planning proposals, Council will endeavour to ensure the planning agreement is signed and executed prior to the gazettal of the planning proposal.

5.2 Savings provisions

5.2.1 Planning agreements associated with planning proposals that have not received Gateway Determination at the time of adopting this policy

This Policy is to be applied to any planning agreements associated with planning proposals which had not received a Gateway Determination at the time of adopting this Policy.

5.2.2 Planning agreements associated with planning proposals that have received Gateway Determination at the time of adopting this policy

For planning agreements associated with planning proposals which had already received Gateway Determination at the time of adopting this Policy, Council's position on the value and type of the developer contributions under the planning agreement is as follows:

- (a) for those planning agreements where Council and the applicant have already reached an in-principle written agreement about the value and type of the planning agreement deliverables, Council will honour the agreement reached with no change to the agreed terms and value;
- (b) for those planning agreements where Council and the applicant have not reached an in-principle written agreement about the value and type of the planning agreement deliverables, but where a previous Council resolution has nominated specific terms as Council's position, there will be no change to this position and terms as resolved, and
- (c) for those planning agreements without an in-principle written agreement on the value and type of the planning agreement deliverables, and where there is no specific Council resolution relating to deliverables or terms, the deliverables and terms will be negotiated according to this Policy, and also having regard to relevant past Council resolutions, the specific infrastructure needs arising from the development enabled by the planning proposal, and the broader public interest.

5.2.3 Planning agreements associated with development applications

At the time of adoption, this Policy applies to any planning agreement associated with any development application (except where written agreement in-principle has been reached by both parties and the planning agreement and development application and have both been publicly exhibited).

5.2.4 Variations to planning agreements solely relating to aligning the planning agreement to this policy

Council may consider but is not obliged to accept variations to any draft planning agreement already endorsed by Council or its delegate, at the time of adoption of this Policy.

5.3 Negotiating and preparing a draft planning agreement or amendment

Council has several roles to play in any planning agreement. It is required to act in its capacity as a regulatory and planning authority and, in the majority of cases, as a stakeholder and asset manager. This Policy acknowledges those roles and seeks to separate them in order to ensure probity and transparency. Therefore, in negotiating a planning agreement, the following arrangements regarding negotiation will be practiced:

- a member of Council staff will be nominated as the Planning Agreement Officer ("PA Officer"), with delegation to negotiate a planning agreement or amendments on behalf of Council. This delegation will be granted in accordance with Council's standard delegation procedures. Negotiation may be carried out by an independent third party appointed by the responsible Council staff;
- the responsible PA Officer may engage specialists to participate in negotiations and provide advice. Any reasonable costs associated with this will be paid by the developer;
- the PA Officer will not make verbal, binding commitments during face-to-face negotiations to ensure a proper assessment of proposed public benefits is undertaken;
- the PA Officer may negotiate a planning agreement before and after public exhibition of the draft agreement or its amendment. The PA Officer is delegated to negotiate minor changes that do not affect deliverables prior to execution;
- Councillors will not participate in negotiations with developers but may:
 - (a) endorse a letter of offer/draft planning agreement for exhibition purposes;
 - (b) resolve to agree or not agree to enter into a planning agreement.
- prior to finalisation and execution, a report to Council will detail public exhibition outcomes and recommend further changes if necessary. The report will include recommendations on how to proceed with the agreement (that is, to either seek execution of the agreement, amend the agreement or not proceed with the agreement);
- planning agreement offers will be assessed by the PA Officer and relevant Council staff. An independent third party may be engaged for negotiation and assessment;
- discussions with developers will include at least two Council officers (including the PA Officer). Minutes of meetings will be prepared and circulated for clarity and transparency, and
- Councillors will not be involved in direct negotiations but will endorse and approve the agreement by resolution for exhibition and execution.

The PA Officer responsible for negotiating a planning agreement will not also be responsible for assessing the associated development application or planning proposal. Council will ensure that any officer involved in negotiating a planning agreement does not have a conflict of interest, pecuniary or otherwise, in accordance with Council's Code of Conduct.

If a PA Officer considers they may have a conflict of interest, they must immediately notify their Executive Director so that an alternative officer / or, if necessary, an independent third party can be appointed.

Any person reporting to the PA Officer who is involved in the preparation or negotiation of the planning agreement will also be bound by the same provisions of this Policy with respect to interactions with Council officers assessing the development application or planning proposal, and any potential conflicts of interest.

Prior to finalisation and execution of a planning agreement, a report to Council is required to detail the outcomes of the public exhibition and where necessary recommend further changes to the draft

planning agreements as a result of the exhibition and above considerations. The report will include recommendations about how to proceed with the planning agreement (i.e. seek execution of the agreement, amend the agreement or not proceed with the agreement).

5.4 Input from other Council officers

The PA Officer or relevant Council Officer must consult widely with Council staff on any proposed planning agreement (including amendment or revocation) where it affects community facilities, open space, road, traffic, property, assets or financial management, facilities staffing, maintenance, or similar matters. This includes seeking input from the Council's Executive Team before accepting a formal PA offer, consulting with infrastructure coordination and planning teams for land dedication or works aligning with local infrastructure planning, and engaging property and asset management teams to assess long-term ownership and maintenance responsibilities.

5.5 Involvement of independent third parties in the negotiation and assessment process

Council may at its sole discretion appoint an independent person to facilitate or otherwise participate in the negotiation or assessment of a planning agreement, or aspects of it, including where:

- (a) an independent assessment of a proposed instrument change or development application is necessary or desirable;
- (b) factual information requires validation in the course of negotiations;
- (c) where Council may have an interest or stake in the development proposed or where Council owns the land being developed;
- (d) sensitive financial or other information must be verified or established in the course of negotiations;
- (e) facilitation of complex negotiations (including legal advice) is required in relation to large projects or where numerous parties or stakeholders are involved, or
- (f) independent valuation, or independent quantity surveying is required.

Council may engage a probity advisor in circumstances where planning agreement negotiations have been controversial, associated with a history of litigation or complaint, involve a unique approach to provision of deliverables or where considerable technical and environmental challenges arise.

Where Council has a commercial interest or stake in the development proposed (other than a general public benefit) an independent third party will be engaged to carry out the assessment of the proposed instrument change, development application or planning agreement. The cost of the independent third party or parties will be borne by Council.

5.6 Amending or revoking a planning agreement

Council and the developer may negotiate the amendment or revocation of an executed planning agreement and depending on the circumstances, engage an independent third party to act on behalf of Council in these circumstances.

A planning agreement may be amended or revoked by a further agreement in writing signed by representatives of Council and the developer. The costs associated with amending or revocation of a planning agreement will be borne by the developer.

An amendment of a planning agreement may need to be negotiated where there is a material change to a planning proposal planning controls, a material change to the deliverables/contributions within a planning agreement, or where a development application linked to the agreement is modified under section 4.55 of the Act and the modification has a bearing on development contributions applicable under the planning agreement.

Amendment or revocation of a planning agreement must follow the statutory requirements contained in the Act and the Regulation.

Except for any explicit waiver clause within a planning agreement, which may be acted upon solely at Council's discretion, any changes that are proposed to be made to a draft planning agreement after public notice has been given will be subject to renotification if the changes would materially affect:

- (a) how any of the matters specified in section 7.4 of the Act are dealt with by the planning agreement;
- (b) other key terms and conditions of the planning agreement;
- (c) the planning authority's interests or the public interest under the planning agreement, and
- (d) whether a non-involved member of the community would reasonably be expected to have made a submission objecting to the change if it had been publicly notified.

The responsible Council staff may engage specialists in particular fields to participate in negotiations and provide advice to the staff and eventually to Council when it considers the agreement. Council may require any costs associated with this to be payable by the developer.

Consistent with their role generally for the making of planning agreements, Councillors will not participate in negotiations with a developer or their representatives relating to amendments or revocation of a planning agreement but may have a role (as the full Council) in:

- (a) endorsing any amendments for exhibition purposes; and
- (b) endorsing a proposed revocation.

Where Council has a commercial interest or stake in the development proposed (other than a general public benefit) an independent third party will be engaged to carry out the assessment of the proposed instrument change, development application or planning agreement. The cost of the independent third party or parties will be borne by Council.

5.7 Lobbying

In relation to planning agreements, Councillors should not:

- (a) fetter their discretion by giving undertakings to vote a certain way to an interested party prior to considering all the information relevant to a decision;
- (b) act as an agent for proponents, including moving motions that have been drafted by a person associated with a developer or other third parties, and
- (c) accept information from a developer of a technical nature without passing it on to the relevant council officers for assessment and so that it is captured in council's record keeping system.

6. NOTIFICATION AND EXHIBITION

6.1 Public notification of planning agreements, amendments or revocation

A draft planning agreement, amendment or revocation must be publicly notified and available for public inspection in accordance with the Act (currently a minimum period of 28 days in accordance with section 7.5(1) of the Act). Council may decide to notify a draft planning agreement for a longer period at its discretion. Council will also notify the application to which a planning agreement relates in accordance with its community engagement strategy.

Where practical, Council will attempt to notify planning agreements in conjunction with the associated planning proposal or development application (including modification of consent).

A draft planning agreement offer is required to be endorsed by Council for public notification purposes as follows:

- (a) in the case of a planning proposal application: before the planning proposal is sent to the Department for Gateway Determination, with the intention of exhibiting the draft agreement with the planning proposal, and
- (b) in the case of a development application (or modification of consent), before the relevant Planning Panel considers the development application (or modification of consent), with the intention of exhibiting the draft agreement as soon as practicable after lodgement of the development (or modification) application.

The costs relating to public notification of a planning agreement will be borne by the developer. Fees will be charged in line with Council's Fees and Charges Schedule. Costs associated with amending or revoking a planning agreement will also be payable by the developer.

6.2 Re-notification

Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in Council's opinion, a material change is made to the terms of the agreement or the application after the agreement has previously been publicly notified and inspected. Refer to section 5.6 above, such a change could arise as a consequence of public submissions made about the agreement or the application, or formal consideration of them by Council. The cost of a re-notification will be charged in line with Council's Fees and Charges Schedule, payable by the developer.

6.3 Public comment on draft planning agreements

All public submissions to a planning agreement will be considered before finalisation of the planning agreement for execution.

Council may resolve not to proceed with a planning agreement as a result of matters raised in a public submission.

7 IMPLEMENTATION AND CONDITIONS

7.1 Preparation of the planning agreement

Unless otherwise agreed by the parties in a particular case, planning agreements will be prepared by the developer using Council's planning agreement template found at **Appendix A** and the formal offer made by the developer, as reported to Council.

The planning agreement will also be prepared in accordance with the requirements of the Act, the Regulation and this Policy. The planning agreement must include an explanatory note prepared in accordance with the requirements of the Act, the Regulation, this Policy and Council's template at **Appendix B**.

7.2 Parties to the planning agreement

Council and the developer will be parties to the planning agreement.

If Council is not the consent authority, or another entity is involved in the agreement (for example another council), that other entity may be required to be a party to the agreement.

Where the developer is not the land owner or does not own all land to which the planning agreement relates, the Council will require the landowner or other relevant landowners to be parties to the agreement so that the agreement can be registered on the title of the land.

7.3 Implementation agreements and Infrastructure Services Delivery Plan

The Infrastructure Services Delivery Plan ("ISDP") is a document which details the items of work to be delivered by way of a planning agreement. The ISDP will be prepared by the developer to assist in the preparation, negotiation, and implementation of the planning agreement. Council's template ISDP can be found at **Appendix E** of this Policy.

Ordinarily, a planning agreement will deal with all matters necessary to conclude the agreement with the developer, including:

- (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 a work is to be delivered and handed over to the Council, and
- (d) the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

There may be some circumstances where the parties are not able to resolve some of these matters at the time the agreement is entered into, particularly if the agreement accompanies an application for an instrument change. If this is the case, Council may require the planning agreement to be contingent upon an implementation agreement to be entered into between the parties at a later date on terms satisfactory to the Council, that deals with those matters that cannot be resolved at the time the planning agreement is entered into.

However, Council's preference is for all matters that are relevant to a proposal be dealt with in the planning agreement prior to its execution by the parties.

7.4 When can a planning agreement be executed?

A planning agreement is executed when it is signed by all of the parties.

A planning agreement can be entered into at any time after the planning agreement is publicly notified in accordance with the Act and Regulation and subject to Council resolution to enter into the planning agreement.

Council will require a developer to give an irrevocable offer and execute the planning agreement at the following times:

- (a) in respect of a development application (including modification of consent) or complying development certificate, Council will seek to have the planning agreement executed prior to the grant of development consent. If the planning agreement is not executed prior to the grant of development consent, Council will impose a condition requiring the planning agreement to be entered into and, if relevant, registered on title either as a deferred commencement condition or prior to the issue of a Construction Certificate or any Occupation Certificate, depending on the proposed timing for delivery of planning agreement contributions, and
- (b) in respect of a planning proposal, Council will expect to have the planning agreement executed prior to Council requesting that the Minister make the instrument change referred to in the planning proposal, or before Council makes the instrument change under delegation.

Council may also impose conditions of consent requiring compliance with the planning agreement and the delivery of the relevant planning agreement contributions at the required time.

Council cannot impose a condition of consent that requires a developer to enter into a planning agreement on terms different to those offered, or if a planning agreement was not offered.

7.5 When will planning obligations arise?

The obligations under a planning agreement will arise as agreed between the parties, and the timing for delivery of each public benefit/planning agreement contribution must be specified in the planning agreement. Council will generally require planning agreement contributions to be provided as follows:

- (a) in the case of a monetary contribution, full payment of the monetary contribution will be due prior to the issue of any construction certificate;
- (b) in the case of works, those works are to be due prior to the issue of any occupation certificate for development on the land (including any partial occupation certificate). Council will require any works on land intended to be dedicated (for example embellishment of a public reserve) to be completed prior to that dedication;
- (c) in the case of land dedication/transfer for affordable housing, the dedication/transfer is to occur within 10 business days of the registration of the relevant subdivision plan creating the lot to be dedicated, or the issue of any occupation certificate for the land to be dedicated, whichever occurs later;
- (d) in the case of other land or facility dedication, dedication is to occur prior to occupation of the development or the issue of any occupation certificate for the development (including any partial occupation certificate). This timing may be varied depending on how the development will be staged and the location of the land to be dedicated. Council will require this information from the developer, so Council be properly informed when negotiating the likely timing for the dedication of the land;
- (e) dedication of public reserves or public roads can be made on registration of a subdivision plan creating the lot to be dedicated in accordance with the relevant provisions of the *Local Government Act 1993* or the *Roads Act 1993*, and

- (f) Council in agreement with the developer may choose to add a final date or maximum time period in which the planning agreement contributions are to be delivered, for example, within 5 years of execution of the agreement.

In the case of staged developments, Council may accept the planning obligations to be delivered in stages, consistent with the applicable stages of development as outlined in a 'staging plan' to form part of the planning agreement.

7.6 Monitoring and review of a planning agreement

Council will monitor the performance of the developers' obligations under a planning agreement. This may include Council requiring the developer (at the developers' cost) to report periodically to Council on its compliance with obligations under the planning agreement.

Council will require the planning agreement to contain a provision requiring the parties to use their best endeavours to agree on any modification to the agreement having regard to the outcomes of the review.

Council monitors planning agreements by:

- (a) undertaking quarterly reviews of planning agreement milestones and status through the Delivery Program and Operational Plan (DPOP) reporting process;
- (b) reporting annually on the status of Planning Agreements as part of its Annual Report, and
- (c) including deliverables in Council Finance Audits.

7.7 Modification or discharge of obligations

Council may agree to a provision in a planning agreement permitting the developer's obligations under the agreement to be modified or discharged in the following circumstances:

- (a) the developer's obligations have been fully carried out in accordance with the agreement; or
- (b) the development consent to which the agreement relates has lapsed or was surrendered; or
- (c) the instrument change to which the agreement relates did not proceed, or
- (d) the development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate; or
- (e) the substantive performance of the planning agreement, including the developer and/or Council not being able to achieve the key benefits of the agreement has been frustrated by an event or events beyond the reasonable control of the parties; or
- (f) the developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms (see clause 7.8 of this Policy below); or
- (g) other material changes affecting the operation of the planning agreement have occurred, or
- (h) Council and the developer otherwise agree to the modification or discharge of the agreement.

Where required, the modification or discharge of obligations will be carried out through an amendment or revocation of the planning agreement in accordance with the Act and Regulation. However, where the agreement already provides for such changes, formal amendment or revocation may not be necessary.

7.8 Assignment and dealings by the developer

Council requires all planning agreements to prohibit the assignment of any or all of the developer's rights or obligations under the agreement, and to prohibit any dealing in relation to any part or the whole of the land the subject of the agreement unless:

- (a) the developer has, at no cost to Council, first procured the execution by the assignee of all necessary documents in favour of Council under which the assignee agrees to be bound by the original planning agreement;
- (b) the developer has, at no cost to the Council, first procured replacement security from the assignee. Council may require the assignee to provide more security than the original developer if the assignee does not have the same financial standing as the original developer;
- (c) if the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, such documents provide for an agreement by the person to the effect that they, and any receiver appointed by them, will not enjoy rights greater than those of that party;
- (d) the party is not in breach of this agreement, and
- (e) the planning agreement has been registered on title.

Any assignment or dealings by the developer under the planning agreement is subject to Council's approval (which will not be unreasonably withheld) and must be formalised through a Deed of Novation. Additionally, any necessary amendments to the agreement must be made to reflect such changes.

7.9 Provision and timing of security under a planning agreement

Council will require a planning agreement to make provision for security to cover the developer's obligations under the agreement. Matters relevant to the form, timing and indexation of security are as follows:

- (a) form of security
 - security for obligations to deliver works or make monetary contributions will generally be in the form of an unconditional bank guarantee from an Australian bank in favour of Council. The guarantee must cover the full value of the developer's obligations and be on terms otherwise acceptable to Council;
 - in respect of planning agreement contributions in the form of land, Council may require provisions allowing Council to compulsorily acquire any land to be dedicated for one Australian dollar if the developer defaults or falls into administration/liquidation, and
 - Council will require the creation of a charge over land and requires that a caveat be registered on the title if Council has an equitable estate or interest in the land.
- (b) timing of security payment
 - security (such as bank guarantees) must be provided to ensure compliance with obligations under the planning agreement;
 - contributions that do not involve monetary payment to be provided prior to the issue of a construction certificate, or at such other appropriate times, depending on the nature and timing of the planning agreement contributions, and

- where security is required under a planning agreement for a monetary contribution only, the security may be provided as a bank guarantee of the monetary contribution prior to the issue of a construction certificate.
- (c) indexation of security amounts
- security will be subject to indexation in accordance with the formula set out at clause 4.4 of this Policy;
 - the planning agreement will identify when a previously provided security (such as a bank guarantee) will need to be replaced or increased due to indexation, and
 - the developer may pay the full, indexed, monetary contribution instead of providing a bank guarantee for a particular stage in accordance with clause 7.4 of this Policy.

7.10 Registration of planning agreements and caveats

Council requires that planning agreements be registered on the title. Therefore, if the landowner is not the developer, they must be included as an additional party to the planning agreement.

The developer is responsible for registering the planning agreement on the title as soon as practicable after execution of the agreement by the parties. The developer must provide Council with signed consents from all parties whose approval is required for the registration prior to execution of the planning agreement. If, in exceptional circumstances, Council requests to facilitate the registration, the developer will be required to meet Council's costs of and incidental to registering the planning agreement.

Council will require a planning agreement to contain an acknowledgment by the landowner that Council is deemed to have acquired and the landowner is deemed to have granted an equitable estate or interest in the land for the purposes of section 74F of the *Real Property Act 1900* which Council may protect by lodging a caveat notifying that interest.

The caveat remains in effect until all obligations stipulated in the planning agreement are fully satisfied or otherwise released by Council.

In the case of a development application that includes a planning agreement, if the planning agreement is not registered prior to the grant of development consent, Council will require timely registration of the planning agreement as a condition of development consent, and before the consent is acted upon.

Where planning obligations are to be delivered after the registration of a subdivision or strata plan, Council may agree to removal of the planning agreement from the title to final lots (lots that are not to be further subdivided), subject to adequate security being provided to Council for any outstanding planning obligations to be delivered (including satisfaction of defects liability period). This may include:

- (a) a requirement to register the planning agreement against the title to the common property;
- (b) caveats to be registered over any land to be dedicated to Council, and
- (c) bank guarantees to secure the cost of any works and/or monetary contributions that remain outstanding.

7.12 Dispute resolution

Council will require a planning agreement to provide for mediation of disputes between the parties to the agreement, at their own cost, before the parties may exercise any other legal rights in relation to the dispute, save where urgent interlocutory action is required.

7.13 Land Environment Court

Section 7.8(1) of the Act expressly precludes a person from appealing to the Land and Environment Court against the terms of a planning agreement or against the failure of a planning authority to enter into an agreement. There is a core principle that a planning agreement must be made voluntarily on both sides, therefore once voluntarily entered into, there are no appeal rights.

This does not affect the jurisdiction of the Land and Environment Court under section 9.45 of the Act to remedy or restrain a breach of the Act.

7.14 Detailed design plans and specifications

Council will require a planning agreement to make provision requiring detailed design plans and or specifications to be provided to Council for approval prior to the commencement of any works to be delivered under a planning agreement. Proposed works should include deliverables and core elements to be aligned with Council strategies, guidelines and policies.

Cost associated with the Council's review of the plans and specifications, including third party assistance, will be applied in accordance with Council's Fees and Charges.

7.15 Inspections

Council will require a planning agreement to make provision for the inclusion of mandatory inspections where works are to be delivered and/or land is to be dedicated under a planning agreement. All relevant Council departments will be required to inspect and approve works, assets and design/construction standards, to ensure all obligations have been completed to Council's requirements.

Any asset to be transferred or dedicated to Council must meet Council's specific construction requirements provided by Council's designated asset owner, in the first instance. If Council has not documented a specific construction requirement, the asset must comply with the relevant industry specification. If no Council specific construction requirement exists and no industry specification exists, the asset must conform with the relevant Australian Standard, as a minimum.

Council must inspect all assets at specified hold-points during construction and prior to taking ownership, to ensure delivery is in accordance with approved plans and specifications. Council has the right to identify non-compliant works and reject assets that are not constructed to an acceptable standard and are not built in-line with the approved design drawings and specifications. The proponent must rectify and/or replace any assets that have been rejected by Council at their cost and to a standard agreed with Council.

A Private Certifier cannot sign off on the completion of inspections or the satisfactory completion of new handover assets until Council has conducted its inspection and confirmed its satisfaction.

Cost associated with the review will be applied in accordance with Council's Fees and Charges.

7.16 Defects liability period

Where a planning agreement includes the delivery of works, or dedication of land or housing, Council will require a planning agreement to make provision for the inclusion of a defect's liability period and provision of security for the defect's liability period.

In the case of structural or below ground works, the defects liability period shall be two years from issue of certificate of practical completion. In all other circumstances, the defects liability period will be one year from issue of certificate of practical completion.

Security in the form of an unconditional bank guarantee will be held for the defect's liability period. The amount of the security will be determined by Council at its discretion. Generally, the security amount will be equal to 2.5% of the cost of the works. In some cases, a higher rate may be applied to determine the security amount, depending on the risks involved for Council if there is a defect in the works.

Cost associated with the review of documentation of assets inspection will be applied in accordance with Council's Fees and Charges.

7.17 Cost of entering a planning agreement

An Offer to enter into a planning agreement is to be accompanied by an administration fee payable to Council. The fee covers the assessment and administration costs associated with the consideration of the Offer.

Council will require that all reasonable costs for drafting, exhibition, execution and registration of the agreement are met by the developer, in accordance with Council's Fees & Charges. Costs may include fees relating legal advice, independent consultants, land valuers, quantity surveyors and the like.

As noted in Section 5.5 of this Policy, where Council has engaged an independent third party to carry out the assessment of the proposed instrument change, development application or planning agreement on the basis that Council has a commercial interest or stake in the development proposed (other than a general public benefit), the cost of the independent third party or parties will be borne by Council.

7.18 Monetary contributions - Accounting

Monetary contributions collected and/or infrastructure works delivered under a planning agreement will be accounted for in Council's Annual Financial Statements and Annual Report and/or asset registers.

Monetary contributions collected under planning agreements will be held in restricted reserves.

7.19 Monitoring & Review of Policy

This Policy will be reviewed at a minimum of every four (4) years or as otherwise required.

8 TERMS AND DEFINITIONS

In this Policy, the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

affordable housing has the same meaning as under the Act.

asset management strategy means Council's asset management planning as described in Council's Resourcing Strategy prepared in accordance with section 403 of the *Local Government Act 1993*.

bond means an insurance bond from a party with no less than an "A" -S & P Global credit rating.

CEO means the Chief Executive Officer, the General Manager or the Interim General Manager of Council as the case may be.

condition of development consent means a condition contained in a consent issued under Part 4 of the Act to carry out development.

contributions plan means a contributions plan approved under section 7.18 of the Act.

corporate strategic documents are the documents required to be prepared by Council in accordance with Part 2 of Chapter 13 of the *Local Government Act 1993*.

Council means the City of Parramatta Council (ABN 49 907 174 773).

Council's Commercial Interest means where Council has a direct financial or proprietary stake in a development proposal, including but not limited to:

- Council being the landowner of the development site;
- Council acting as a developer or joint venture partner, and
- Council receiving financial or commercial benefits beyond a general public benefit.

dedication of land includes dedication of:

- land in stratum (whether or not within a building);
- lots in a strata plan, and
- interests in land such as but not limited to easements and rights of way.

Department means the Department of Planning, Housing and Infrastructure, or its successor.

developer is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or revocation of an instrument (s7.4(11)), 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 consent has the same meaning as in the Act.

development contribution means the provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost, or the provision of any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

housing and productivity contribution has the same meaning as given in the Act.

instrument change means a change to an environmental planning instrument to facilitate a development application to be made to carry out development under revised planning control.

land, when used in the context of "dedication of land" as required by a planning agreement, includes a Torrens Title lot or part of such a lot, vacant or improved land, land that is the subject of a strata or stratum subdivision, a part of a building or road, or any other form of real property.

PA Officer means a staff member nominated to negotiate a proposed planning agreement or any amendments on behalf of Council.

planning obligation means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution.

planning proposal has the meaning given in the Act.

the public includes a section of the public.

public benefit is the benefit enjoyed by the public as a consequence of a planning agreement contribution.

public facilities mean public infrastructure, facilities, amenities and services.

public purpose has the meaning given in section 7.4 of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021*

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Appendix A Planning Agreement Template

Template Planning Agreement is available on Council's website on the following link:

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Appendix B Explanatory Note Template

Note: The template below is based on a template provided by the NSW Department of Planning, Industry and Environment, which may change from time to time. All Explanatory Notes shall have regard to the relevant sections of the Act and Regulation.

Explanatory Note Template

Environmental Planning and Assessment Regulation 2021 (Clause 205)

Explanatory note for planning agreements under section 7.4 of the Environmental Planning and Assessment Act 1979

1. The parties to this planning agreement are:

City of Parramatta Council as the planning authority

[Developer name] as the developer

2. Description of Subject Land

[Insert]

3. Description of Proposed Change to Environmental Planning Instrument/Development Application

[Insert]

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

[Insert]

5. Effect of the Draft Planning agreement

The Draft Planning agreement:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning agreement) on the Land by the [Landowner/Developer]
- [does/does not] exclude the application of s7.11, s7.12 or s7.24 of the Act to the Development
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- [Specify additional effects]

6. Assessment of the merits of the planning agreement

- What planning purposes are served by the planning agreement?
- How does the planning agreement promote the objects of the Act?
- What is the impact, positive or negative, of the planning agreement on the public?
- How does the planning agreement conform with and promote:
 - the Council's capital works program
 - The principles for local government articulated in Chapter 3 of the *Local Government Act 1997*
- Are there any other matters which a reasonable member of the public would wish to know in understanding this planning agreement?

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Appendix C Summary steps to preparing and negotiating a planning agreement

Council's negotiation system for planning agreements aims to be transparent, consistent, efficient, fair, and accountable. The system seeks to ensure that the negotiation of planning agreements runs in parallel with planning proposal applications or development applications (including modification of consent).

As planning agreements are required by the Act to be publicly exhibited, a planning agreement must be negotiated, drafted and be in a final draft form that will enable it to be publicly exhibited, preferably before the associated planning proposal or development application (including modification of consent).

Therefore, Council prefers that a developer make an offer to enter into a planning agreement prior to the lodgement of a planning proposal or development application (including modification of consent). Council has prepared template documents which must be utilised for planning agreement offers.

For development applications (or modification of consent), the terms of the planning agreement may not have been negotiated by the time the development application is due to be exhibited. In those circumstances, the Council aims to publicly exhibit any draft planning agreement as soon as practicable after lodgement of the development application with Council and before the relevant Planning Panel considers the development application (or modification of consent).

Step 1 – Initiation

- (a) Prior to lodgement of a development application or planning proposal application either a developer or Council might commence the discussions about whether a planning agreement is appropriate in connection with any particular development application or planning proposal in order to inform and then make the offer to enter into the planning agreement.
- (b) Council staff and the developer will decide in principal whether to negotiate a planning agreement in accordance with this Policy and the Practice Note issued by the Planning Secretary under s203(6) of the Regulation. Council staff may determine whether it is appropriate not to proceed with a planning agreement.

Step 2 – Lodgement of Development Application or Planning Proposal

- (a) An initial planning agreement offer should be made by the developer prior the lodgement of a planning proposal or development application (including modification of consent) with Council.
- (b) Any formal planning agreement offer must be made in writing by the developer and landowners (if the developer does not own the land) and should be based on Council's template, which is available on Council's website. A link to the template is provided in Appendix A.
- (c) Any potential variation/s to the template planning agreement should be identified in the planning agreement offer, accompanied by reasons for the variation.
- (d) The planning agreement offer should address each of the requirements under section 7.4 of the Act.
- (e) The final content of the agreement will be subject to the outcome of negotiations between the responsible Council staff, the developer and any division of the Council.
- (f) Council and the developer are to nominate the persons that will represent them in the

negotiations. Council may nominate a third party at its discretion.

Step 3 – Negotiation of commercial terms

- (a) Council's PA Officer will be responsible for all functions with regard to negotiating the proposed planning agreement, subject to resolutions of the Council and/or requirements in this Policy to seek support and approval from other Council staff or legal advisors.
- (b) If the developer is not the owner of the relevant land, the landowner must be an additional party to the proposed planning agreement and negotiations.
- (c) The PA Officer and the developer should conduct initial discussions to identify the broad terms of the planning agreement being proposed. The key commercial issues for negotiation will be identified by the PA Officer and the developer, and the negotiations over these issues will then take place. The PA Officer will prepare and circulate minutes of all discussions with the developer.
- (d) The PA Officer will consult with relevant stakeholders or third-party experts as required during the commercial negotiations.
- (e) The PA Officer will seek in principle support from Council's Executive Team prior to the completion of the commercial terms.

Step 4 – Report to Council

- (a) The outcomes of the negotiation and assessment of the formal written PA offer are to be reported to Council by the PA Officer seeking a resolution that a draft planning agreement be prepared for public exhibition purposes. It is noted that Council may not accept the planning agreement offer based on negotiations between the PA Officer and the developer. In this circumstance further negotiations between the developer and the PA Officer may need to be undertaken to satisfy Council.
- (b) In the case of a planning agreement offer made in conjunction with a planning proposal, the report to Council will ordinarily occur concurrently with a report seeking that the planning proposal be referred to the Department of Planning, Housing and Infrastructure for Gateway Determination.
- (c) In the case of a planning proposal application: before the planning proposal is sent to the Department for gateway determination, with the intention of exhibiting the draft agreement with the planning proposal;
- (d) In the case of a development application (or modification of consent), before the relevant Planning Panel considers the development application (or modification of consent), with the intention of exhibiting the draft agreement as soon as practicable after lodgement of the development (or modification) application.

Step 5 – Preparation of draft planning agreement

- (e) Once the Council has resolved to prepare a planning agreement for public exhibition, the PA Officer will (under delegation) commence preparation of the formal legal document based on Council's standard template planning agreement (provided in conjunction with this Policy).
- (f) There may be further negotiation between the parties in respect of the detailed terms of the planning agreement. These matters should have previously been identified in Step 3.
- (g) All parties are to agree to a final draft planning agreement and the accompanying explanatory note & Infrastructure Service Delivery Plan for public exhibition purposes.

Note: Where time permits, and as agreed by both parties, this step may occur prior to the matter being reported to Council. However, the draft agreement cannot be publicly exhibited prior to a Council resolution resolving to do so.

Step 6 – Public Notice

- (a) A draft planning agreement & infrastructure service delivery plan will need to be endorsed by Council for public notice purposes.
- (b) Following endorsement by Council, the development application or planning proposal and draft planning agreement will be publicly notified and exhibited for a period of 28 days in accordance with the Act, this Policy and Council's Notification Policy.
- (c) Where possible, public notice of the draft planning agreement should occur concurrently with public exhibition of the associated planning proposal or development application (including modification of consent).
- (d) Council will consider any submission made about a planning agreement before finalising the agreement for further report to Council.
- (e) The PA Officer will also be involved in the finalisation of the draft planning agreement or amendment to a planning agreement following its public exhibition and may negotiate further changes to the draft planning agreement having regard to any matters raised following public notification and exhibition.
- (f) If changes are made to a planning agreement, Council will consider if those changes warrant re-notification and repeat of any of the steps above.

Step 7 – Further report to Council

- (a) Following the completion of the public exhibition period a further report will be put to Council detailing the outcomes of the public notice, addressing any submissions, and where necessary recommending further changes to the draft planning agreement as a result of the notice. The report will include recommendations about how to proceed with the planning agreement, (i.e. seek execution of the agreement, amend the agreement or not proceed with the agreement).
- (b) It is noted that Council may not accept the recommendations of the PA Officer. In this circumstance further negotiations between the developer and the PA Officer may need to be undertaken to satisfy Council.

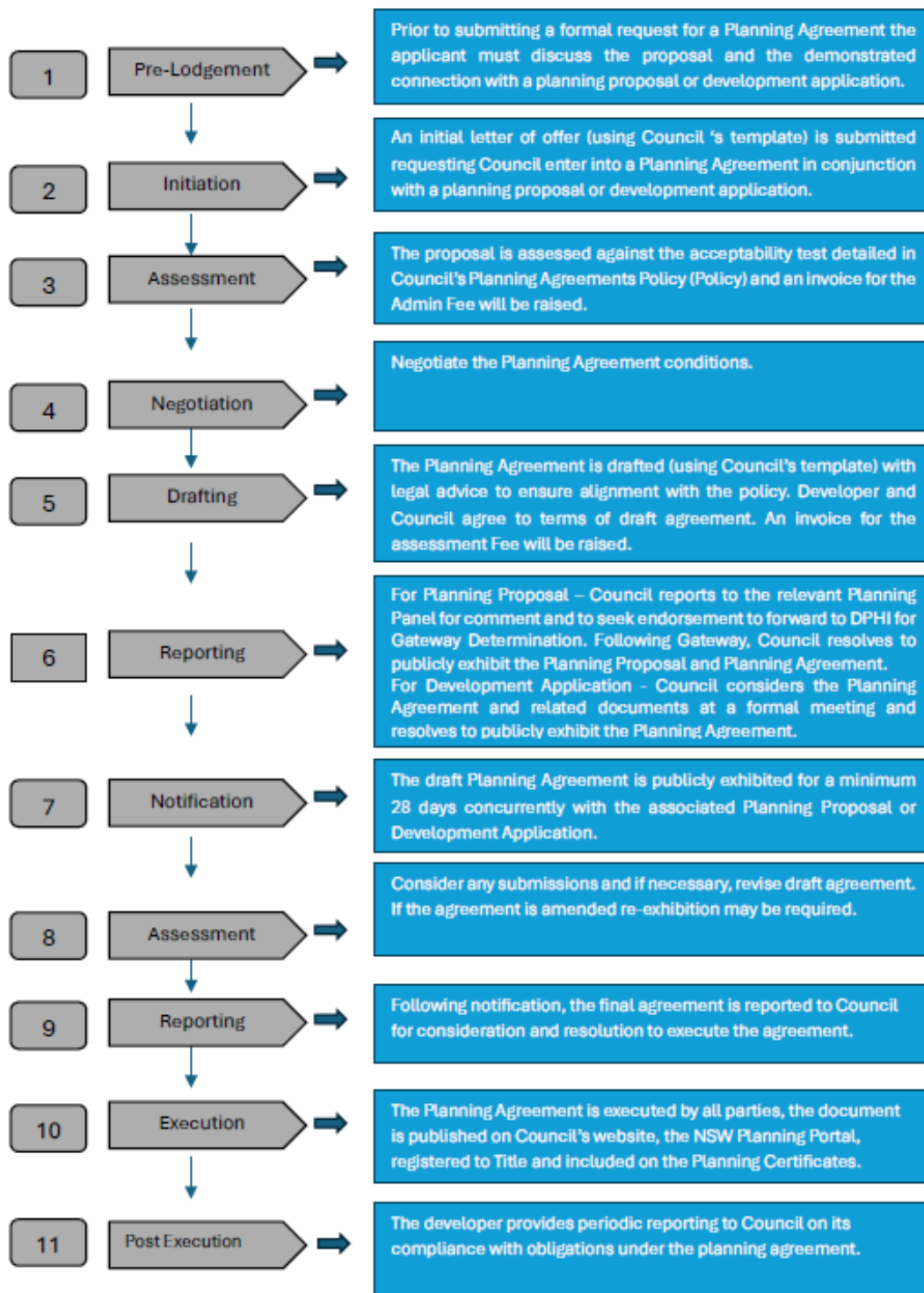
Step 8 – Execution of planning agreement

- (a) The report referred to in (7) should be put to Council before the development application is considered by the relevant Planning Panel.
- (b) Should Council endorse a planning agreement for execution, the planning agreement will be executed by both parties.
- (c) A planning agreement must be executed before Council will finalise any instrument change associated with an accompanying planning proposal application. If the developer refuses to execute a planning agreement offered in connection with a planning proposal, the Council will ask the Minister not to proceed with the relevant instrument change under section 3.35(4) of the Act.
- (d) Where a planning agreement is made in conjunction with a development application (including modification of consent) or a complying development certificate, the development consent will be subject to conditions requiring the planning agreement to be complied with. If the agreement is not executed prior to development consent being granted, a condition will be imposed requiring execution of the planning agreement in accordance with the offer made and subsequent registration of the agreement as authorised by Section 7.7(3) of the Act. Conditions requiring the execution and registration of a planning agreement may be deferred

commencement conditions that must be satisfied before the consent becomes operational.

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Appendix D Indicative Planning Agreement Flowchart



Appendix E Infrastructure Services Delivery Plan Template

The Infrastructure Services Delivery Plan Template is available on Council's website on the following link:

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Appendix F Letter of Offer Template

[Date]

The Chief Executive Officer
City of Parramatta Council
PO Box 32
Parramatta NSW 2124

Dear Sir/Madam

**Offer to enter into planning agreement in relation to [planning proposal] or [development application] [insert description]
Property: [insert details]**

Introduction

[Name of Developer / Proponent] offers to enter into a planning agreement with Council under section 7.4 of the *Environmental Planning and Assessment Act 1979* in connection with [insert details of Development Application or Planning Proposal] for the provision of public benefits as set out in this letter.

The [Name of Developer / Proponent] has considered Council's Planning Agreements Policy (**Policy**) in the making of this offer and has sought to follow the Policy, to the fullest extent possible.

Offer

Table 1 below sets out the details of the key terms of the offer with the full commercial terms to be in accordance with Council's Planning agreement template, [except as identified in table 2 of this letter]

Item	Terms
Parties	City of Parramatta Council [Insert Developer and Landowner details. If the Landowner is not the Developer, then the Council will ordinarily require the Landowner to be a party to the agreement].
Land	[Insert Lot and DP references of all land applying to the planning proposal and/or development application, as well as street address information]
Planning Proposal / Development Application	[Insert details of the Planning Proposal and / or Development Application, including a summary description of the proposed changes to the instrument or the proposed development]
Monetary Contribution	[Insert details of the amount, manner of delivery and timing of any monetary contribution offered]

Item	Terms
Works	[Insert details of the nature and extent, manner of delivery and timing of any works to be undertaken. Include a detailed scope of works if available and any relevant plans]
Dedication of Land	[Insert details of the nature and extent, manner of delivery and timing of any land to be dedicated. Include a detailed description of the land and any relevant plans]
Other Public Benefits	[Insert details of any other public benefits offered, such as arrangements or contributions for the maintenance of works to be delivered under the planning agreement; or public access easements or restrictive covenants to be registered to ensure that benefits are maintained in perpetuity]
Value of Public benefits	[Advise of the total value of the public benefits offered and the basis of those values]
Application of section 7.11, 7.12 and 7.24	[Advise whether the offer is subject to the exclusion of sections 7.11, 7.12 or 7.24 of the Act]
Dispute Resolution	[Advise whether the terms of the template planning agreement relating to dispute resolution are accepted or are to be amended]
Security	[Confirm the nature and extent of any security to be offered for each of the contributions to be made. Note that Council will ordinarily require bank guarantees to secure obligations to make monetary contributions and to complete works].
Restrictions on Issue of Certificates	[Advise whether provisions restricting the issue of Construction Certificates, Occupation Certificates and Subdivision Certificates will apply].
Other Terms	[Advise whether other terms of the template planning agreement are accepted or are to be amended and insert details of any additional terms]
Costs	[Name of Developer / Proponent] agrees to pay Council's reasonable costs of and incidental to the negotiation, preparation and entering into the agreement, as well as administration and enforcement of the planning agreement in accordance with the terms set out in the template planning agreement.

Table 1

[Name of Developer / Proponent] accepts the terms as generally set out in the Council's planning agreement template except as set out in Table 2, below.

Item	Clause number and heading	Proposed Change	Justification for proposed change
1.	General		

Table 2

Draft Planning agreement

Enclosed with this letter is a copy of Council's draft planning agreement with the departures listed above shown in tracking.

[Option if applicable] The Developer / Proponent has engaged [insert legal firm] to advise in relation to the negotiations of the Planning agreement. The Developer / Proponent agrees that Council's legal representatives may contact the abovementioned legal representative to discuss the proposed changes if required.

Yours faithfully

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