

Planning Agreements Policy

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City of
Newcastle

Table of Contents

Introduction.....	1
1 Purpose.....	1
2 Scope.....	1
3 Objectives.....	1
4 Principles.....	1
Introduction.....	2
5 Legislative Framework.....	2
Use of Planning Agreements	2
6 Circumstances in which Council may consider entering into a planning agreement.....	2
7 Land use planning and development objectives that can be addressed by Planning agreements.....	3
8 Acceptability test to be applied to all planning agreements	3
9 Preparation and form of a planning agreement.....	3
10 Preparing a draft planning agreement on behalf of Council.....	3
11 Separation of CN's commercial and planning assessment roles	4
12 Public comment on planning agreements prior to adoption by Council	4
13 Application of section 7.11 and section 7.12 Local Infrastructure Contributions to development to which a planning agreement relates	4
Annexure A - Definitions	5
Annexure B - Policy Authorisations	7
Document Control.....	8

INTRODUCTION

1 Purpose

- 1.1 The Planning Agreements Policy (this Policy) sets out City of Newcastle's (CN's) approach to Planning agreements, in keeping with the provisions of the *Environmental Planning and Assessment Act 1979* (NSW) (the Act) and the *Environmental Planning and Assessment Regulation 2021* (NSW) (the Regulation).

2 Scope

- 2.1 This Policy applies to planning agreements that Council may enter into with a developer who requests changes to the Newcastle Local Environmental Plan (LEP) through a Planning proposal or has made, or proposes to make, a Development application or application for a complying development certificate for land within the Newcastle Local Government Area (LGA).

3 Objectives

- 3.1 The objectives of this Policy are:
- a) To establish a fair, transparent and accountable framework governing the use of Planning agreements by CN officers and Council.
 - b) To facilitate flexible and innovative delivery of public infrastructure, facilities, works services and social amenities in line with CN strategic planning objectives for planning proposals, development applications and/or complying development certificates.
 - c) To provide a means for stakeholders in development to have greater involvement in the delivery of appropriate public benefits identified by strategic planning plans and policies.
 - d) To facilitate public participation and allow the community to gain an understanding of the benefits of planning agreements for the provision of public benefit.

4 Principles

- 4.1 City of Newcastle (CN) commits to the following:

Accountability and transparency

- a) Planning decisions will not be unduly influenced by planning agreements;
- b) Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act or law;

Commitment to the community

- c) Planning agreements will be underpinned by proper strategic land use planning and support the local strategic planning framework, including CN's Community Strategic Plan (CSP), Newcastle Local Strategic Planning Statement (LSPS), Newcastle Local Housing Strategy (LHS) and other relevant adopted plans, policies and strategies;
- d) Development that is unacceptable on planning grounds will not be permitted regardless of public benefits offered by developers;

Fairness

- e) Council will not seek benefits under a planning agreement that are wholly unrelated to a development;

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- f) When considering a development or Instrument change, Council will not give undue weight to a planning agreement;
 - g) Council will not allow the interests of individuals or small groups to demand benefits, which otherwise outweigh the public interest;
 - h) Council will not take advantage of an imbalance of bargaining power with the developer, for example, it will not improperly rely on its statutory position in order to extract unreasonable public benefits under a planning agreement;
 - i) Planning agreements will not be used as a means of general revenue raising or to overcome revenue shortfalls.

INTRODUCTION

5 Legislative Framework

- 5.1 Part 7, Division 7.1, Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (the Act) provides the legislative framework for planning agreements considered.
- 5.2 Part 9, Division 1 of the *Environmental Planning and Assessment Regulation 2021* (the Regulation) has further requirements relating to the form and subject matter of planning agreements, making, amending and revocation of planning agreements, giving public notice and other procedural arrangements relating to planning agreements.
- 5.3 This Policy should be read in conjunction with the NSW Department of Planning, Industry and Environment's Planning Agreements Practice Note - February 2021. This Practice Note provides detailed guidance on the negotiation, administration and making of planning agreements.

USE OF PLANNING AGREEMENTS

6 Circumstances in which Council may consider entering into a planning agreement

- 6.1 Council may consider entering into a planning agreement in the following instances (this is not an exhaustive list):
 - a) Major development sites or precincts that are owned by a single land-owner or a consortium of land-owners.
 - b) Where the developer has a direct incentive, such as bringing forward potential development, to be involved in the delivery of community infrastructure.
 - c) Where the developer wants to provide community infrastructure in addition to, or at a higher standard than, what has been specified under the Contributions plan.
 - d) Where Council and the developer agree to a different and better or more innovative outcome than can be achieved through imposing direct or indirect contributions. This may include the provision of publicly viewable and/or accessible art.
 - e) Where a proposed development has not been anticipated by Council thus works and facilities to cater for this development have not been identified. A planning agreement can be prepared to specifically target the needs of the development.
 - f) Where necessary infrastructure identified in an adopted contributions plan will be brought forward, or infrastructure not identified in such a plan, that achieves a net public benefit, will be delivered.

7 Land use planning and development objectives that can be addressed by Planning agreements

- 7.1 The following matters may be addressed through planning agreements (this is not an exhaustive list):
- a) the demands created by the development for public amenities, public services, transport and other infrastructure;
 - b) conservation or enhancement of the natural environment;
 - c) provision of affordable housing;
 - d) any deficiency in the provision of public facilities in the Newcastle LGA;
 - e) inclusions in the development that meet specific planning objectives of CN;
 - f) source of funds for recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
 - g) monitoring the planning impacts of development;
 - h) securing planning benefits for the wider community.

8 Acceptability test to be applied to all planning agreements

- 8.1 CN officers will assess the planning agreement against the test below to determine the acceptability of a proposed planning agreement.
- 8.2 The acceptability test requires that planning agreements:
- a) Are directed towards legitimate planning purposes, that can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development;
 - b) Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development;
 - c) Produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
 - d) Provide for a reasonable means of achieving the desired outcomes and securing the benefits;
 - e) Protect the community against adverse planning decisions.
- 8.3 Planning agreements that seek to change the purpose, use or ownership of CN land, including the dedication of land to Council, will involve consultation with relevant internal stakeholders, including CN's Asset Advisory Committee if deemed appropriate.

9 Preparation and form of a planning agreement

- 9.1 The developer must prepare a planning agreement relating to a particular application for an Instrument change, Development application or complying development certificate which reflects Council policy and CN's procedures and adheres to all relevant legislation. Relevant fees prescribed by Council's adopted fees and charges must also be paid.

10 Preparing a draft planning agreement on behalf of Council

- 10.1 CN officers will liaise with the developer and prepare a draft planning agreement on behalf of Council. Councillors are not involved in discussions with the developer on the planning agreement.

11 Separation of CN's commercial and planning assessment roles

- 11.1 If CN has a commercial interest in the subject matter of a planning agreement as a landowner, developer or financier, we will ensure that the person who assesses the application to which a planning agreement relates is not the same person, or a subordinate of the person, who negotiated the terms of the planning agreement on behalf of Council.

12 Public comment on planning agreements prior to adoption by Council

- 12.1 CN encourages the public to make submissions on planning agreements. This will allow Council to better understand local needs and permit fine tuning of the planning obligations set out in any planning agreement.
- 12.2 Council will consider any submissions received during the formal exhibition period. If the draft planning agreement is substantially changed because of the submissions received during the exhibition period, the draft planning agreement and explanatory note may be re-exhibited.
- 12.3 Public submissions received during the exhibition period will be reported to the elected Council with the draft planning agreement when the planning agreement is reported for final endorsement.

13 Application of section 7.11 and section 7.12 Local Infrastructure Contributions to development to which a planning agreement relates

- 13.1 The use of a planning agreement does not exclude the application of section 7.11 or section 7.12 Local Infrastructure Contributions to a development to which the agreement relates, unless otherwise agreed by Council.

ANNEXURE A - DEFINITIONS

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

CEO means Chief Executive Officer of the City of Newcastle and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

Contributions Plan means a contributions plan approved under section 7.18 of the Act for the purpose of requiring contributions under section 7.11 or 7.12 of the Act.

Council means the elected Council.

City of Newcastle (CN) means Newcastle City Council.

Developer means a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (s7.4(11)), or who has made or proposes to make a development application, or who has entered into a planning agreement with or is otherwise associated with such a person.

Development application has the same meaning as in the EP&A Act.

Explanatory note means a written statement that provides details of the objectives, nature, effect and merits of a planning agreement, or an amendment to or revocation of a planning agreement to be used for or applied towards a public purpose.

Instrument change means a change to an environmental planning instrument (e.g. the Newcastle Local Environment Plan) to facilitate a development the subject of a planning agreement.

Development or Infrastructure 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 a material public benefit to be used for or applied towards a public purpose.

Net public benefit is a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.

Nominated Project manager means the nominated Council officer who will be involved in reviewing the draft planning agreement and oversees implementation of the planning agreement.

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

Planning authority has the same meaning as in Division 7.1 of Part 7 of the EP&A Act, and means:

- a) a council, or
- b) the Minister for Planning, or
- c) the Planning Ministerial Corporation, or
- d) a development corporation (within the meaning of the Growth Centres (Development Corporations) Act 1974), or
- e) a public authority.

Planning benefit means a development contribution that confers a net public benefit.

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 same meaning as in the EP&A Act.

Practice Note means the Planning Agreement Practice Note, published by the Department of Planning, Industry and Environment – February 2021.

Public benefit means the benefit enjoyed by the public as a consequence of a development contribution.

Public facilities means public infrastructure, amenities and services.

Public purpose means any purpose that benefits the public, including by not limited to a purpose specified in section 7.4 of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Unless stated otherwise, a reference to a section or clause is a reference to a section or clause of this Policy.

ANNEXURE B - POLICY AUTHORISATIONS

Title of authorisation	Description of authorisation	Position Number & Title
Nil.		

DOCUMENT CONTROL

Policy title	Planning Agreements Policy
Policy owner	Manager Regulatory, Planning and Assessment
Policy expert/writer	Urban Planning Section Manager
Associated Guideline or Procedure Title	Planning Agreement Procedure
Guideline or Procedure owner	Manager Regulatory, Planning and Assessment
Prepared by	Regulatory, Planning and Assessment
Approved by	Council
Date approved	26/07/2022
Policy approval form reference	ECM# 6964473
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Version #	Version number 2
Category	Regulatory, Enforcement and Compliance
Details of previous versions	Version #1 – ECM: 6964543
Keywords	Planning agreement, Section 7.11, Section 7.12, infrastructure contributions
Relevant strategy	Nil.
Relevant legislation/codes (reference specific sections)	This Policy supports CN's compliance with the following legislation: <ul style="list-style-type: none"> – <i>Environmental Planning and Assessment Act 1979 (NSW)</i> – <i>Environmental Planning and Assessment Regulation 2021</i>
Other related documents	Nil.
Related forms	Planning Agreement Template
Required on website	Yes
Authorisations	Functions authorised under this Policy at Annexure B