

The City of Newcastle

Policy

Planning Agreements 2009

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Planning Agreements Policy 2009

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Planning Agreements 2009

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1.0 Introduction

1.1 Name of this policy

This Policy is known as the Newcastle City Council Planning Agreements Policy (Policy). It sets out Newcastle City Council's policy and procedures relating to planning agreements under the Environmental Planning and Assessment Act 1979.

1.2 Commencement of this policy

The Policy was adopted by resolution of Council on 15 December 2009.

1.3 Terms and definitions used in this policy

In this Policy, the following terminology is used:

Act means the Environmental Planning and Assessment Act 1979.

Contribution Plan means a contribution plan approved under section 94EA of the Act for the purpose of requiring contributions under section 94 or 94A of the Act.

Council means The City of Newcastle.

Developer is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (s93F(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 Environmental Planning and Assessment Act 1979.

Development contribution means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

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.

Instrument change means a change to an environmental planning instrument to facilitate a development the subject of a planning agreement.

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.

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.

Practice Note means the Practice Note on Planning Agreements published by the former Department of Infrastructure Planning and Natural Resources (July 2005).

Public includes a section of the public.

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

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

Public purpose means any purpose that benefits the public, including by not limited to a purpose specified in section 93F (s) of the Act.

Regulation means the Environmental Planning and Assessment Regulation 2000.

1.4 Policy purpose

The objectives of this policy are:

- (a) To establish a fair, transparent and accountable framework governing the use of planning agreements by Council
- (b) To broaden the range and extent of development contributions made by developers towards public facilities in the Council's area.
- (c) To set out the Council's specific policies and procedures relating to the use of planning agreements within the Council's Local Government Area
- (d) To give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits
- (e) To facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public benefit.
- (f) Where applicable to achieve outcomes from development which ensure that the public has full access to the City's public natural assets.

1.5 Legal Context

The current legal and procedural framework for planning obligations is set out in Subdivision 2 of Division 6 of Part 4 of the Act and Division 1A of Part 4 of the Regulation.

A Practice Note titled "Planning Agreements" dated July 2005 has been issued by the Department of Planning for the purposes of clause 25B of the Regulation. While Council is not legally bound to follow the Practice Note, Council will be guided by it. Should there be any inconsistency between this policy and the Practice Note, this policy will prevail.

1.6 When may Council enter into a planning agreement?

Section 93F of the Act sets out the circumstances under which a planning agreement may be entered into. It provides that a planning agreement may be made between a planning authority, such as The City of Newcastle (or two or more planning authorities) and a person (the developer):

- (a) Who has sought a change to an environmental planning instrument (such as a planning proposal); or
- (b) Who has made or proposes to make a development application; or
- (c) Who has entered into an agreement with or is otherwise associated with a person in one of the above two categories.

1.7 What are the mandatory requirements of a planning agreement?

Section 93F of the Act requires planning agreements to include provisions specifying:

- (a) A description of the land to which the agreement applies
- (b) A description of the change to the environmental planning instrument to which the agreement applies or 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) In the case of development, whether the agreement exclude (wholly or in part) or does not exclude the application of section 94, 94A or 94EF of the Act to the development,
- (e) If the agreement does not exclude the application of section 94 to the development , whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94
- (f) Mechanism for the resolution of disputes under the agreement.
- (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.

Clause 25E(1) of the Regulation requires that an explanatory note must accompany a planning agreement that:

- (a) Summarises the objectives, nature and effect of the proposed agreement, amendment or revocation, and
- (b) That contains an assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

2.0 Policy on the Use of Planning Agreements

2.1 Principles governing the use of planning agreements

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

- (a) Planning decisions will not be bought or sold through planning agreements.
- (b) The council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other act or law.
- (c) The council will not use planning agreements for any purpose other than a proper planning purpose.
- (d) Development that is unacceptable on planning grounds will not be permitted because of public benefits offered by developers.
- (e) The council will not seek benefits under a planning agreement that are wholly unrelated to a particular development.
- (f) When considering a development or instrument change, the Council will not take into consideration any public facility or public benefits proposed in the planning agreement that are wholly unrelated to the application.
- (g) When considering a development or instrument change, the Council will not give undue weight to a planning agreement.
- (h) The council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement.
- (i) The council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements.

2.2 Circumstances in which Council will consider negotiating a planning agreement

Council, in its complete discretion, may negotiate a planning agreement in connection with any application by the developer for an instrument change or for development consent relating to any land in Council's area.

2.3 What matters will the Council consider?

The matters that the Council may consider in any such negotiation may include, but are not limited to the following:

- (a) 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
- (b) meet the demands created by the development for new public infrastructure, amenities and services
- (c) achieve the provision of affordable housing
- (d) address a deficiency in the existing provision of public facilities in Council's area
- (e) achieve recurrent funding in respect of public facilities

- (f) prescribe inclusions in the development that meet specific planning objectives of Council
- (g) monitor the planning impacts of development
- (h) secure planning benefits for the wider community.

2.4 Acceptability test to be applied to all planning agreements

Council will apply the following test in order to assess the desirability of a proposed planning agreement:

- (a) Is the proposed planning agreement directed towards a proper or legitimate planning purpose having regard to its statutory planning controls and other adopted planning policies and strategies and the circumstances of the case?
- (b) Does the proposed planning agreement provide for a reasonable means of achieving the relevant purpose and outcomes and securing the benefits?
- (c) Can the proposed planning agreement be taken into consideration in the assessment of the relevant instrument change or development application?
- (d) Will the proposed planning agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest against planning harm?
- (e) Does the proposed planning agreement promote Council's objectives in relation to the use of planning agreements as set out in this policy?
- (f) Does the proposed planning agreement conform to the principles governing Council's use of planning agreements as set out in this Policy?
- (g) Are there any relevant circumstances that may operate to preclude Council from entering into the proposed planning agreements?
- (h) Will the proposed planning agreement provide public benefits that bear a relationship to the development?

2.5 Consideration of planning agreements for instrument changes and development applications

When exercising its functions under the Act in relation to an application by a developer for an instrument change or a development consent to which a proposed planning agreement relates, Council will consider to the fullest extent permitted by law:

- (a) Whether the proposed planning agreement is relevant to the application and hence may be considered in connection with the application, and
- (b) If so, the proper planning weight to be given to the proposed planning agreement.

2.6 Application of section 94 and section 94A to development to which a planning agreement relates

Council has no general policy on whether a planning agreement should exclude the application of Section 94 or section 94A of the Act to development which the agreement relates. This is a matter for negotiation between Council and a developer having regard to the particular circumstances of the case.

2.7 Recurrent charges

Planning agreements may require a developer to make contributions towards the recurrent costs of public facilities. Details regarding recurrent charges will need to be negotiated between the developer and the planning authority and documented within the draft agreement.

Where the public facility or public benefit is intended to serve the wider community, the planning agreement may require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

2.8 Pooling of development contributions

Where a proposed planning agreement provides for a monetary contribution by the developer, Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements and applied progressively for the different purposes under those agreements. Pooling may be appropriate to allow public benefits to be provided in a fair, equitable and timely way.

2.9 Methodology for valuing public benefits under a planning agreement

Unless otherwise agreed in a particular case, public benefits will be valued as follows:

Provision of land for a public purpose

Where the benefit under a planning agreement is the provision of land for a public purpose, the value of the benefit will be determined by an independent valuer who is experienced in valuing land 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 in carrying out such a valuation will be borne by the developer.

Carrying out of works for a public purpose

Where the benefit under a planning agreement is the carrying out of works for a public purpose, the value of the benefit will be determined by an independent quantity surveyor (who is acceptable to Council), on the basis of the estimated value of the completed works being determined using the method that would be ordinarily be adopted by a quantity surveyor. Council will prepare the scope of work for the independent quantity surveyor. All costs of the independent quantity surveyor in carrying out this work will be borne by the developer.

Material public benefit

Where the benefit under a planning agreement is the provision of a material public benefit, Council and the developer will negotiate the manner in which the benefit is to be valued for the purposes of the agreement.

2.10 Credits and Refunds

Council generally will not agree to a planning agreement providing for the surplus value under a planning agreement being refunded to the developer or offset against development contributions required to be made by the developer in respect of other development in Council's area.

2.11 Implementation Agreements

In appropriate cases, Council may require a planning agreement to provide that before development the subject of the agreement is commenced, the parties are to enter into an implementation agreement that provides for matters such as:

- (a) the times at which and, if relevant, the period during which, the developer is to make provision under the planning agreement
- (b) the design, technical specification, and standard of work required by the planning agreement to be undertaken by the developer
- (c) the manner in which work is to be handed over to Council
- (d) the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement
- (e) the management of maintenance of land or works following handover to Council.

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 Council and the developer(s) entering into an implementation agreement at a later date, on terms satisfactory to the Council.

2.12 Monitoring and reviewing of planning agreements

Council will continuously monitor the performance of the developer's obligations under a planning agreement. This may include Council requiring the developer (at their 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 establishing a mechanism under which the planning agreement is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance under the agreement.

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

2.13 Modification and discharge of the developer's obligations

Council will generally only agree to a provision in a planning agreement permitting the developer's obligation under the agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- (a) the developers obligations have been fully carried out in accordance with the agreement

- (b) the developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become bound to Council to perform the developer's obligations under the agreement
- (c) the development consent to which the agreement relates has lapsed
- (d) the performance of the planning agreement has been frustrated by an event beyond the control of the parties
- (e) Council and the developer otherwise agree to the modification for discharge of the agreement.

Such a provision will require the modification or revocation of the planning agreement in accordance with the Act and Regulation.

2.14 Assignment and dealings by the developer

Council will require every planning agreement to provide that the developer may not assign its rights or obligations under the agreement nor have any dealings in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:

- (a) Council has given its consent to the proposed assignment or dealing
- (b) the developer has, at no cost to Council, first secured the execution by the person, with whom it is dealing of all necessary documents in favour of Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement, and
- (c) the developer is not in breach of the planning agreement.

2.15 Provision of security under a planning agreement

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

2.16 Preparation and form of a planning agreement

The developer will prepare a planning agreement relating to a particular application for an instrument change or development application which reflects the policies and procedures set out in this document. All planning agreements are to be accompanied by an explanatory note. An example is set out in **Appendix 2**.

2.17 Council's cost of negotiating, entering into, monitoring and enforcing a planning agreement

Council will require a planning agreement to make provision for payment by the developer of Council's costs and incidental to:

- (a) negotiating and entering into the agreement
- (b) enforcing and monitoring the agreement.

The amount to be paid by the developer will be determined by negotiation in each case.

2.18 Notifications on certificates

The Council will require a planning agreement to contain an acknowledgement by the developer that the Council will make a notation under s149(2) of the Act relating to the land that is the subject of the agreement or any other land associated with the agreement.

2.19 Registration of planning agreements

The Council may require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to s93H of the Act if the requirements of that section are satisfied.

2.20 Dispute resolution

The Council will require a planning agreement to provide for mediation of disputes between the two parties (at their own cost) before the parties may exercise any other legal rights in relation to the dispute.

2.21 Hand-over of works

The Council will generally not accept the hand-over of a public work carried out under a planning agreement unless the developer furnishes to the Council a certificate to the effect that the work has been carried out and completed in accordance with the agreement and any applicable development consents (which may, at the Council's discretion, be a final occupation certificate, compliance certificate or a subdivision certificate) and, following the issue of such a certificate to the Council, the work is also certified as complete by a Council building surveyor or engineer.

The Council will also require the agreement to provide for a defects liability period during which any defects must be rectified at the developer's expense.

2.22 Management of land or works after hand-over

If a planning agreement provides for the developer, at the developer's cost, to manage or maintain land that has been dedicated to the Council or works that have been handed-over to the Council, the Council may require the parties to enter into a separate implementation agreement in that regard (see 2.14).

The failure of the parties to reach agreement in relation to management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the planning agreement.

2.23 Public use of privately-owned facilities

If a planning agreement provides for the developer to make a privately-owned facility available for public use, the Council may require the parties to enter into a separate implementation agreement in that regard (see 2.14).

The failure of the parties to reach agreement in relation to management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the planning agreement.

3.0 Procedures Relating to the Use of Planning Agreements

3.1 Introduction

Council's negotiation system for planning agreements aims to be efficient, transparent and accountable. Council will seek to ensure that negotiations of planning agreements run in parallel with applications for instrument changes or development applications so as not to unduly delay ordinary planning processes.

3.2 When should a planning agreement be negotiated?

Council prefers that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.

3.3 Who will negotiate a planning agreement on behalf of Council?

Council officers will negotiate a planning agreement on behalf of Council. Councillors will not be involved in the face-to-face negotiation of the agreement.

3.4 Separation of Council's commercial and planning assessment roles

If Council has a commercial interest in the subject matter of a planning agreement as a landowner, developer or financier, Council 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 in its capacity as landowner, developer or financier.

3.5 Involvement of independent third parties in the negotiation process

Council may appoint an independent person to facilitate or otherwise participate in the negotiation of a planning agreement, or aspects of it, such as 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) sensitive financial or other information must be verified or established in the course of negotiations
- (d) facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved, or
- (e) dispute resolution is required under a planning agreement.

The cost of the independent person will be borne by the developer.

3.6 Process to entering into a planning agreement

The negotiation of a planning agreement will generally involve the following key steps:

- 1 Prior to lodgement of the relevant application by the developer, the Council and Developer (and any other relevant person) will decide whether to negotiate a planning agreement.
- 2 This matter will be reported to a Meeting of Council where Council will formally decide whether to commence negotiations on a planning agreement.
- 3 The parties will then appoint a person to represent them in the negotiations and also appoint a third person to attend and take minutes of all negotiations.
- 4 The parties will decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, and appoint such a person.
- 5 The parties will also agree on a timetable for negotiations and the protocols and work practices governing their negotiations.
- 6 The parties will then identify the key issues for negotiation and undertake the negotiations, including any negotiations or consultations with relevant public authorities.
- 7 If agreement is reached, the developer will prepare the proposed planning agreement including the explanatory note and provide a copy to Council.
- 8 The parties may undertake further negotiations on the specific terms of the proposed planning agreements.
- 9 Once agreement is reached on the terms of the proposed planning agreement, the developer will be required to execute the agreement.
- 10 The developer may then make the relevant application to Council accompanied by a copy of the proposed agreement.

Parties may be required to undertake further negotiations and, hence, a number of the above steps may need to be repeated as a result of the public notification process or its formal consideration by the Council in connection with the relevant application.

3.7 Public notification of planning agreements

In accordance with the Act, a planning agreement must be publicly notified and available for public inspection for a minimum period of 28 days. The Council may decide to notify a planning agreement for a longer period.

The Council will also notify the application to which a planning agreement relates.

Council will publicly re-notify and make available for public inspection a revised planning agreement and application to which it relates, if in the Council's opinion, a material change is made to the terms of the agreement after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification, or the formal consideration by the Council or any other reason.

3.8 Public comment on planning agreements

The Council encourages the public to make submissions on planning agreements. This will allow the Council to better understand local needs and permit fine tuning of the planning obligations set out in any planning agreement.

Public submissions on draft planning agreement notifications will be assessed by the Council when it considers whether it should enter the proposed planning agreement.

3.9 When is a planning agreement required to be entered into?

Council will require a planning agreement to be entered into as a condition of consent to which the agreement relates. Where a planning agreement relates to an instrument change, the agreement will need to be entered into prior to the granting of any development consent that relies on the instrument change.

A planning agreement is entered into when it is signed off by all of the parties

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

3.10 Planning Agreement Register

The Council is required to keep a register of planning agreements applying to land within the Council's area, whether or not the Council is a party to a planning agreement. The Council is required to record in the register the date an agreement was entered into and a short description of the agreement (including any amendment).

The Council will make the following available for public inspection during ordinary office hours:

- The City of Newcastle Planning Agreements Policy 2009
- the planning agreement register kept by the Council
- copies of all planning agreements (including amendments) that apply to the area of the Council
- copies of the explanatory notes relating to those agreements or amendments.

Council will also make the planning agreement register available to the public on its website.

Appendix 1 – Planning Agreement Template

(Between Council and Developer)

PLANNING AGREEMENT

Parties

of , New South Wales (**Council**)

and

of , New South Wales (**Developer**).

Background

(For Development Applications)

- A. On, , the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

(For Changes to Environmental Planning Instruments)

- A. On, , the Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities that Development Consent was granted.
- C. The Instrument Change was published in NSW Government Gazette No. on and took effect on .
- D. On, , the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

Operative provisions

1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

[Specify the land to which the Agreement applies and the development to which it applies]

3 Operation of this Agreement

[Specify when the Agreement takes effect and when the Parties must execute the Agreement]

4 Definitions and interpretation

1.1 In this Agreement the following definitions apply:

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

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means Local Environmental Plan .

Land means Lot DP , known as .

Party means a party to this agreement, including their successors and assigns.

Public Facilities means .

Regulation means the Environmental Planning and Assessment Regulation 2000.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

[Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made]

6 Application of the Development Contributions

[Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied]

7 Application of s94 and s94A of the Act to the Development

[Specify whether and to what extent s94 and s94A apply to development the subject of this Agreement]

8 Registration of this Agreement

[Specify whether the Agreement is to be registered as provided for in s93H of the Act]

9 Review of this Agreement

[Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur].

10 Dispute Resolution

[Drafting Note 10: Specify an appropriate dispute resolution process]

11 Enforcement

[Specify the means of enforcing the Agreement]

12 Notices

1.3 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Council

Attention:

Address:

Fax Number:

Email:

Developer

Attention:

Address:

Fax Number:

Email:

1.4 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

1.5 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

1.6 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

13 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

- 14 Assignment and Dealings**
[Specify any restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restrictions apply]
- 15 Costs**
[Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties]
- 16 Entire agreement**
This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.
- 17 Further acts**
Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.
- 18 Governing law and jurisdiction**
This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.
- 19 Joint and individual liability and benefits**
Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.
- 20 No fetter**
Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- 21 Representations and warranties**
The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.
- 22 Severability**
If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
- 23 Modification**
No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.
- 24 Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 GST

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

Execution

Dated:

Executed as an Agreement:

Appendix 2 – Explanatory Note Template

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

- 1 Parties**

(Planning Authority)
(Developer)
- 2 Description of Subject Land**
- 3 Description of Proposed Change to Environmental Planning Instrument/Development Application**
- 4 Summary of Objectives, Nature and Effect of the Draft Planning Agreement**
- 5 Assessment of the Merits of the Draft Planning Agreement**
- 6 The Planning Purposes Served by the Draft Planning Agreement**
- 7 How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979**
- 8 How the Draft Planning Agreement Promotes the Public Interest**

For Planning Authorities:

- (a) Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities
- (b) Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted
- (c) Councils – How the Draft planning Agreement Promotes the Elements of the Council’s Charter
- (d) All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

Other Matters

Signed and Dated by All Parties