



# Planning Agreements Policy

## Parramatta City Council

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# 1. Policy statement

## 1.1 Name of this policy

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

## 1.2 Application of the policy and commencement

This policy applies to planning agreements entered into by Parramatta City Council.

This Policy was adopted by resolution of the Council on 25 February 2008.

## 1.3 Objectives of this Policy

The objectives of this policy are:

- a) to establish a fair, transparent and accountable framework governing the use of planning agreements by the Council;
- b) to enhance the range and extent of development contributions made by development 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 area;
- d) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits; and
- 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 benefits.

## 1.4 What does the planning agreements policy set out?

This Policy sets out the Parramatta City Council approach to the use of planning agreements through negotiation when considering rezoning or planning applications for development in the Parramatta area.

In particular, this Policy sets out:

- the circumstances in which the Parramatta City Council would ordinarily consider entering into a planning agreement;
- the matters ordinarily covered by a planning agreement;
- the form of development contributions ordinarily sought under a planning agreement;
- the kinds of public benefits ordinarily sought and, in relation to each kind of benefit, whether it involves a planning benefit;
- the method for determining the value of public benefits and whether that method involves standard charging;
- whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate;
- when, how and where public benefits will be provided;
- the procedures for negotiating and entering into planning agreements; and
- the Council's policies on other matters relating to planning agreements, such as their review and modification, the discharging of the developer's obligations under agreements, the circumstances, if any, in which refunds may be given, dispute resolution and enforcement mechanisms, and the payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

## 1.5 Legal policy context

The current legal and procedural framework for planning obligations is set in Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* and Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation 2000*.

A Practice Note titled "Planning Agreements" has been issued by the Department of Planning for the purposes of clause 25B of the Regulation. While the Council is not legally bound to follow the Practice Note, Council will be guided by the Practice Note, except that, if there is any inconsistency between the Practice Note and this Policy, then Council will be guided by this Policy.

## 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 Parramatta City Council (or two or more planning authorities, such as two or more councils and the Minister for Planning) and a person (the developer):

- who has sought a change to an environmental planning instrument (such as a rezoning application);
- who has made or proposes to make a development application; or
- 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(3) 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 excludes (wholly or in part) or does not exclude the application of section 94, 94A, or 94EF 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) a 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.

The Act does not preclude a planning agreement containing other provisions that may be necessary or desirable in particular cases, except as provided by law. Any planning agreement prepared by the Council will comply with this Policy and developers can expect that they will contain clauses that reflect Council's requirements as set out in this Policy.

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

- summarises the objectives, nature and effect of the proposed agreement, amendment or revocation; and
- 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.

## 1.8 Terms and definitions used in this policy

In this Policy, the following terminology is used:

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

*Council* means the Council of the City of Parramatta.

*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 Act.

*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.

*planning benefit* means a development contribution that confers a net public benefit, that 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.

*public facilities* means public infrastructure, facilities, amenities and services.

*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.

*Regulation* means the *Environmental Planning and Assessment Regulation 2000*.

## 2. Principles for planning agreements

### 2.1 Purposes of planning agreements

Section 93F(1) of the Act provides that a planning agreement is a voluntary agreement or other arrangement between one or more planning authorities and a developer under which the developer agrees to make development contributions towards a public purpose.

The Council's approach to the negotiation of planning agreements is based on the purpose of furthering the Council's planning vision for the area, as set out in the Corporate Strategy Implementation plans. It is also informed by the mission and values of the Corporate Plan.

The Council may negotiate a planning agreement with a developer in connection with any proposed application by the developer for an instrument change (eg rezoning application) or for development consent relating to any land in the Council's area. The Council may also negotiate a planning agreement in association with another Council or another authority where relevant. The negotiation of a planning agreement is at the absolute discretion of the Council.

### 2.2 Principles underlying 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 planning benefits offered by developers that do not make the development acceptable in planning terms.
- e) The council will not seek benefits under a planning agreement that are wholly unrelated to particular development.
- f) When considering a development or rezoning application, 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 rezoning application, 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.

The practice note sets out several tests for assessing whether planning obligations are appropriate. These include an *acceptability test* to ensure that planning agreements:

- are directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development;
- provide for public benefits that bear a relationship to development that are not wholly unrelated to the development;
- produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits; and
- protect the community against planning harm.

### 2.3 What matters will the Council consider?

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

- (a) Whether the planning agreement(s) meets the demands created by the development for new public infrastructure, amenities and services.
- (b) If inclusions in the development meet specific planning objectives of the Council.
- (c) If compensation is required 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.
- (d) Rectification of an existing deficiency in the existing provision of public facilities in the Council's area is made,
- (e) Whether recurrent funding of public facilities is required or provided.
- (f) The extent to which the Council needs to monitor the planning impacts of development.
- (g) Whether planning benefits for the wider community accrue from the planning agreement.

Development that is unacceptable on planning grounds will not be given consent because of unrelated benefits offered by a developer. The most important factor in deciding what planning obligations might be required is likely to be the size of the development, but other factors such as the location or type of development may be relevant. These will establish core information such as likely increases in population and demand for particular public services.

This information will help the Council to determine the application and to prepare the planning agreement.

### 2.4 Examples of public benefits that may be provided under a planning agreement.

The Department of Planning *Practice Note* on Planning Agreements sets out the acceptability tests for assessing whether planning obligations are appropriate in planning terms (refer clause 1.5 above). These matters have been taken into account when compiling the public benefits that might be sought set out in Table 1 below.

**Table 1: Potential public benefits and relevant development types**

Type of benefit	Relevant development types
Local community facilities (including education, community health and well-being, childcare provision and civic improvements)	Residential developments would be relevant to any of these facilities, while commercial developments are relevant to the provision of childcare and civic improvements.
The environment (including compensation for loss or damage, monitoring the impacts of development)	Developments that have a negative impact on the environment either in construction or ongoing land use are relevant to this type of facility.
Transport improvements (including intersection upgrades, roadway expansion or pavement reconstruction, cycleways and signposting)	Any form of development that generates additional population potential or traffic movements could make a contribution of this type of facility. Generators of heavy vehicular traffic such as industry in particular are relevant to transport improvements.
Providing planning benefits to the wider community (including affordable housing, economic development programs, training and skills provision)	Residential developments are relevant to affordable housing, while commercial, retail or industrial development are relevant to economic or skills development.

While the Council will endeavour to standardise development contributions sought under planning agreements, this will not always be possible. However, the Council considers that it is helpful for developers to know the Council's general priorities for planning obligation negotiations. Therefore Table 1 indicates the main types of benefits that the Council will consider and their relative importance.



Council prefers the collection of funding through a planning agreement as it provides additional funding and allows greater flexibility for the allocation of the spending of the funds.

Appendix A to this policy provides an outline of the potential planning benefits and Council will maintain a list of suitable projects which could benefit. It is also recognised that the planning benefits actually proposed may differ from the examples given in the table or the facilities in Appendix A because negotiations for each proposed development will reflect the circumstances of each case and the needs created by the scale of proposed change.

Therefore, other benefits which are not identified specifically above may also be relevant. Consequently, the lists do not prevent public benefits being negotiated on a case by case basis, particularly where planning benefits are also involved.

## 2.5 Recurrent charges

Planning agreements may require a developer to make contributions towards the recurrent costs of public facilities. Where the public facility primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity.

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 for a set period only which will be negotiated according to the length of time it may take to establish an independent revenue stream and/or the proportion of the demand for that facility generated by the relevant development.

## 2.6 Pooling of development contributions

Where a proposed planning agreement provides for a monetary contribution by the developer, the 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, particularly essential infrastructure, to be provided in a fair and equitable way.

## 2.7 Do other development contributions apply?

The Council has no general policy on whether a planning agreement should exclude the application of s94 or s94A of the Act to development to which the agreement relates. This is a matter for negotiation between the Council and a developer having regard to the particular circumstances of the case.

However, where the application of s94 of the Act to development is not excluded by a planning agreement, the Council will generally not agree to a provision allowing benefits under the agreement to be taken into consideration in determining a development contribution under section 94.

Planning agreements entered into by the Council will state that the agreement does not exclude the application of section 94EF unless the Minister or the appropriate development corporation approves the exclusion of the application of section 94EF in relation to that agreement.

## 3. Negotiating procedures and probity

### 3.1 Introduction

The Council's negotiation system 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 applications for instrument changes or development applications so as not to unduly delay the approval.

The Council is required to ensure that a planning agreement is publicly notified in the same manner and at the same time as the application for the instrument change or the development application to which it relates.

Council's preference is therefore to have the planning agreement negotiated and documented before it is publicly notified as required by the Act and Regulation. It is also preferable that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.

### 3.2 Steps in the negotiation process

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

1. Prior to the 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. The 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 person.
5. A timetable for negotiations and the protocols and work practices governing their negotiations will be agreed between the parties.
6. The key issues for negotiation will be identified by the parties, and the negotiations over these issues will take place.
7. If agreement is reached, the Council (and any other relevant party) will prepare the proposed planning agreement including the explanatory statement, and provide a copy of it to the developer.
8. The parties may undertake further negotiation on the specific terms of the proposed planning agreement as necessary.
9. Once agreement is reached on the terms of the proposed planning agreement, the developer may then make the relevant application to the Council accompanied either by a copy of the proposed agreement or by an offer to enter into such an agreement with specifics of the agreement set out in detail.
10. The Council will publicly exhibit the application and planning agreement in accordance with the Act and its Notification Policy.
11. The Council may negotiate further changes to the planning agreement having regard to any matters raised following public notification and exhibition.
12. The Council may approve the application and set out the conditions for the agreement or, if an agreement has been executed, set out in the consent the terms of the agreement.

The 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.

### 3.3 Probity

Public probity is important to Parramatta Council and it will ensure that the negotiation of any planning agreements is fair, transparent and is directed at achieving public benefits in an appropriate manner free of corruption.

In this regard, Council will:

- Inform any applicant about Council values and business ethics – specifically, about ethical behaviour appropriate to business dealings.
- Ensure that its communities understand the system and the Council's role – specifically, how the planning agreements system operates and how Council will deal with developments objectively.
- Notify planning agreements to ensure they are open and transparent – specifically, achieving maximum public awareness of the matters contained in a planning agreement(s) and the potential benefits of an agreement.
- Ensure appropriate delegations and separation of responsibilities in considering development applications that involve planning agreements – specifically, the need to ensure processes adequately address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk.
- Ensure that modifications to approved development should be subject to the same scrutiny as the original development application.
- Ensure that Councillors and Council staff understand their varied roles, some of which have potential to conflict.
- Take every step to ensure that conflicts of interest are ameliorated to the greatest extent possible – specifically, independent assessment by third parties where Council has an interest and not entering into any contractual arrangement which purport to guarantee outcomes that are subject to separate regulatory processes.

The procedures that will be implemented to address these matters may include, but not be limited by, the following procedures:

- (a) The Councillors will not be involved in the face to face negotiation of the agreement but will ultimately approve the planning agreement as part of their duties as Councillors.
- (b) A Council officer with appropriate delegated authority will negotiate a planning agreement on behalf of the Council in accordance with this Policy.
- (c) The Council will, in all cases, ensure that Council staff with key responsibility for providing advice on approvals, approving applications or ensuring compliance, do not have a role in the assessment of the commercial aspects of the agreement nor on the conditions of the planning agreement except where advice is required on matters relating to the conditions of consent for a particular proposal.
- (d) The Council may involve an independent person(s) to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome.
- (e) The Council will ensure that all negotiations with a developer and their consultants are sufficiently separated and documented.
- (f) Where the Council has a commercial stake in development the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development.

## 4. Notification and procedure

### 4.1 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 or shorter period as permitted by the Act.

The Council will also notify the application to which a planning agreement relates in accordance with its Notification Policy.

### 4.2 Re-notification

The Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in the Council's opinion, a material change is made to the terms of the agreement or the application 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 and inspection of the agreement or the application, or their formal consideration by the Council, or for any other reason.

### 4.3 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 to planning agreement notifications will be assessed by the Council in accordance with its Notification Policy.

## 5. Implementation and conditions

### 5.1 Preparation of the planning agreement

The Council will prepare a planning agreement relating to a particular application for an instrument change or development application. The Council uses a standard form of planning agreement on which every planning agreement is based which reflects the policies and procedures set out in this document (refer Appendix B). This planning agreement will include an explanatory note (refer Appendix C).

The Council will require a planning agreement to make provision for payment by the developer of the Council's costs of and incidental to negotiating, preparing and entering into the agreement as well as administering and enforcing the agreement.

### 5.2 When is a planning agreement required to be entered into?

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

The Council will usually require a planning agreement in relation to an instrument change to be entered into before the Council submits the relevant draft planning instrument to the Director-General under sub-section 68(4) of the Act.

The Council will usually require a planning agreement in relation to a development application to be entered into as a condition of development consent.

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

### 5.3 When will planning obligations arise?

The Council will generally require a planning agreement to provide that the developer's obligations under the agreement take effect when the first development consent in respect of development that is the subject of the agreement is granted.

### 5.4 Implementation agreements

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

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.

## 5.5 Monitoring and review of a planning agreement

The Council will continuously monitor the performance of the developer's obligations under a planning agreement and report them in accordance with the Act.

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.

## 5.6 Modification or discharge of obligations

The 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
- c) The development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate; or
- d) The performance of the planning agreement has been frustrated by an event or events beyond the reasonable control of the parties; or
- e) The developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms; or
- f) Other material changes affecting the operation of the planning agreement have occurred; or
- g) The council and the developer otherwise agree to the modification or discharge of the agreement.

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

## 5.7 Assignment and dealings by the developer

The Council will not permit the assignment of any or all of the developer's rights or obligations under the agreement, nor will the Council permit 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 the Council, first procured the execution by the assignee of all necessary documents in favour of the 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. The 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.

This does not affect the operation of any of other requirements of the agreement.

## 5.8 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 Agreement and on terms otherwise acceptable to the Council.

## 5.9 Notations on certificates under S149(5) of the Act

The Council will generally require a planning agreement to contain an acknowledgment by the developer that the Council will make a notation under S149(5) of the Act about a planning agreement on any certificate issued under s149(2) of the Act relating to the land the subject of the agreement or any other land.

## 5.10 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.

## 5.11 Dispute resolution

The Council will require a planning agreement to provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

## 5.12 Will Council allow the application of SEPP 1?

Variation to applicable development standards under State Environmental Planning Policy No.1 – Development Standards (SEPP 1) as part of a planning agreement or application will not be permitted unless the Council is of the opinion that the tests within SEPP 1 are satisfied and the proposed planning agreement addresses the matters specifically required to be addressed under SEPP 1 in relation to the dispensation sought.

## 5.13 How will the Council value public benefits under a planning agreement?

The value of a benefit proposed under a planning agreement will be determined prior to the agreement being made.

If the benefit under a planning agreement is the provision of land for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated amount of compensation to which the Developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land.

If the benefit under a planning agreement is the carrying out of works for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated value of the completed works on the basis of a cost estimate prepared by a registered quantity surveyor.

In either instance, the valuation of the benefits is to be at no cost to the Council.

In the event that a planning agreement proposes works and services that would otherwise be provided as a condition of development consent, then those works and services will be deemed to have no value under the planning agreement.

# Appendix A

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Public benefits for Planning Agreements (clause 2.4)



# Appendix A

## Public benefits for Planning Agreements (Clause 2.4)

### Possible benefits:

The following is a list of possible benefits that the Council may consider for planning agreements. They are not exhaustive and developers are encouraged to discuss these or other benefits that may be included in a planning agreement.

**Local community facilities (including education, community health and well-being, childcare provision and civic improvements)**

*[Note: Specify the facilities required]*

**The environment (including compensation for loss or damage, monitoring the impacts of development)**

*[Note: Specify the facilities required]*

**Transport improvements**

*[Note: Specify the facilities required]*

**Providing planning benefits to the wider community (eg affordable housing, training and skills provision)**

*[Note: Specify the facilities required]*

# Appendix B

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## Template Planning Agreement

# Appendix B

## Template Planning Agreement

Note: The template below is based on a template provided by the NSW Department of Planning, which may change from time to time. All Planning Agreements shall have regard to the relevant sections of the Environmental Planning & Assessment Act, 1979 and Environmental Planning & Assessment Regulation, 2000.

### PLANNING AGREEMENT

(Between Council and Developer)

#### Parties

Parramatta City Council, 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  
 [Drafting Note 2: Specify the land to which the Agreement applies and the development to which it applies]
- 3 Operation of this Agreement  
 [Drafting Note 3: Specify when the Agreement takes effect and when the Parties must execute the Agreement]
- 4 Definitions and interpretation
- 4.1 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*.
- 4.2 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

*[Drafting Note 5: 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

6.1 [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

*[Drafting Note 7: Specify whether and to what extent s94 and s94A apply to development the subject of this Agreement]*

## 8 Registration of this Agreement

*[Drafting Note 8: Specify whether the Agreement is to be registered as provided for in s93H of the Act]*

## 9 Review of this Agreement

*[Drafting Note 9: 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

[Drafting Note 11: Specify the means of enforcing the Agreement]

12 Notices

12.1 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: Chief Executive Officer

Address: 30 Darcy Street, Parramatta NSW 2150  
PO Box 32 Parramatta NSW 2124

Fax Number: (02) 9806 5917 (or specify other)

Email: ##

**Developer**

Attention: ##

Address: ##

Fax Number: ##

Email: ##

12.2 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.

12.3 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.

12.4 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

[Drafting *Note* 14: 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

[Drafting *Note* 15: 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 C

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Template Explanatory Note

# Appendix C

## Template Explanatory Note

Environmental Planning and Assessment Regulation 2000 (Clause 25E)

Note: The template below is based on a template provided by the NSW Department of Planning, which may change from time to time. All Explanatory Notes shall have regard to the relevant sections of the Environmental Planning & Assessment Act, 1979 and Environmental Planning & Assessment Regulation, 2000.

### EXPLANATORY NOTE

#### Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

1. Parties

Parramatta City Council (Planning Authority)

## (Developer)

2. Description of Subject Land

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

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

5. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

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**