ECONOMY

ITEM NUMBER 8.2
SUBJECT Draft Amended Voluntary Planning Agreements Policy
REFERENCE F2015/02653 - D04724068
REPORT OF Senior Project Officer, Land Use Planning

PURPOSE:
The purpose of this report is to seek Council’s endorsement of the draft Voluntary Planning Agreement Policy for the purpose of public exhibition.

The report also seeks that prior to the formal adoption of any VPA Policy and/or value sharing mechanism, that Council resolve an interim position relating to the value of planning agreements, both within Parramatta CBD and outside the Parramatta CBD.

RECOMMENDATION

(a) **That** Council endorse the draft amended Voluntary Planning Agreements Policy provided at Attachment 1 for the purpose of public exhibition.

(b) **That** the draft amended Voluntary Planning Agreements Policy be placed on public exhibition for a minimum period of 28 days.

(c) **That** Council endorse the consultation strategy within this report as the basis for the public exhibition of the draft amended Voluntary Planning Agreements Policy.

(d) **That** the outcomes of the public exhibition of the draft amended Voluntary Planning Agreements Policy be reported back to Council prior to the adoption of the Policy by Council.

(e) **That** in relation to Voluntary Planning Agreements being considered in the area outside Parramatta CBD, that planning agreements seek to deliver contributions equivalent to 50% of the land value uplift, subject to further review of any applicable Special Infrastructure Contribution (SIC) Levy or an ‘open book’ assessment; and these rates be used as an interim measure, prior to the formal adoption of any Voluntary Planning Agreement Policy.

(f) **That** in relation to Voluntary Planning Agreements being considered for land within Parramatta CBD (as defined by draft Parramatta CBD Planning Proposal), that Council re-affirm the ‘value sharing’ rates endorsed by Council on 10 April 2017, and these rates be used as an interim measure, prior to the formal adoption of any Voluntary Planning Agreement Policy and/or value sharing mechanism.

(g) **That** should the value sharing mechanism not be realised through the CBD Planning Proposal, that the Voluntary Planning Agreements Policy be amended to apply the Non CBD value sharing approach indicated at recommendation (e) to apply to the Parramatta CBD area on a permanent basis.
Further that, Council authorise the CEO to correct any minor anomalies of a non-policy and administrative nature that may arise during policy making process.

EXECUTIVE SUMMARY

1. In 2008, the former Parramatta City Council (PCC) adopted the Parramatta Voluntary Planning Agreements (VPA) Policy. As at May 2016, the City of Parramatta (CoP) was proclaimed and the local government boundary was changed to include parts of the former Auburn and Holroyd Councils, parts of Hornsby Council, and parts of The Hills Shire Council. As a result, three existing Planning Agreement Policies apply to parts of the LGA (Hornsby, Auburn and the former Parramatta City Council area), while the area formally located within Holroyd Council and the Hills Council has no applicable Policy. In order to have one uniform approach to the City of Parramatta, a new amended Policy is proposed.

2. Since the introduction of the original PCC Policy in 2008, Council has been involved in approximately 50 planning agreements, including five from The Hills LGA and seven from the former Auburn LGA. Since 2008, a number of external audits and internal process reviews have been undertaken in relation to Parramatta Council’s (PCC and CoP) VPA processes and procedures. As a result of these it was found that the VPA Policy should be amended to provide greater guidance and transparency to Council, developers and the general public in relation to Council’s VPA negotiation and implementation processes.

3. Key issue that have been addressed in this review of the Planning proposals and which are included in the Draft VPA Council is being asked to consider include:

- The Draft VPA Policy recognises that Council may implement value sharing provisions in other policy documents – such as the CBD Value Sharing framework Council is seeking to implement via the CBD Planning Proposal for sites within the CBD and this VPA policy will assist with the implementation of those mechanisms;
- Establishing Council’s negotiating position for sites outside the CBD where an increase in development potential is proposed which is for Council to negotiate a VPA that seeks to achieve 50% of the value increase resulting from the extra density. The negotiations would also recognise any SIC that might be payable on the land as part of the negotiation and the policy also sets out a process for assessing the impact on the viability of the development should the applicant consider that a 50% contribution will impact on the viability of the site.
- Guidance on what infrastructure Council would prefer to see included in VPAs and criteria for when Council will allow a VPA to be used to allow a developer to provide infrastructure in lieu of s94 or s94A development contributions.
- Guidance on the negotiation of the detail of any VPA including how maintenance contributions, administrative fees, timing and security provisions will be negotiated.
The purpose of this report is to seek Council’s endorsement to publicly exhibit a draft amended Planning Agreements Policy that would apply to the City of Parramatta LGA. Consultation would occur with key stakeholders before being reported back to Council outlining any matters raised during the exhibition period.

INTRODUCTION

5. City of Parramatta (CoP) Council at its meeting of 22 August 2016 considered a report on the review of Council’s Voluntary Planning Agreement Policy and resolved as follows:

That Council notes the progress of the review of Council’s Voluntary Planning Agreements Policy and notes that further work is still required.

6. The purpose of this report is to re-introduce the matters raised in the report of 22 August 2016, and to update that information as relevant at June 2017. The report recommends a draft revised VPA Policy for public exhibition purposes, which has been amended to respond to both internal and external process reviews, as well as public and stakeholder consultation relating to value sharing.

7. While independent of CoP Council’s CBD Planning Proposal value sharing mechanism, the VPA Policy is closely aligned, as VPAs will provide the mechanism for realising value sharing, and as such, the history relating to Council’s consideration of value sharing is included within this report.


e) That the issues raised during this public exhibition period which pertain to Voluntary Planning Agreement (VPA) implementation be considered as part of a draft update to Council’s VPA policy, and that this be the subject of a separate report to Council.

9. This report seeks CoP Council’s endorsement of the draft amended Planning Agreements Policy for the purpose of public exhibition. Council resolution is also sought regarding an interim position relating to the value of planning agreements endorsed prior to the adoption of a VPA policy and/or formalisation of a value sharing mechanism.

VOLUNTARY PLANNING AGREEMENTS (VPA)

10. Section 93F of the Environmental Planning & Assessment Act (EP&A Act) provides the mechanism for VPAs to be lawfully entered into and came into effect in 2005. Section 93F of the Act states that:

(1) A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer):

(a) who has sought a change to an environmental planning instrument, or
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 to whom paragraph (a) or (b) applies, under which
the developer is required to dedicate land free of cost, pay a
monetary contribution, or provide any other material public benefit,
or any combination of them, to be used for or applied towards a
public purpose.

11. The EP&A Act specifies that a ‘public purpose’ includes the provision of public
amenities or public services, the provision of affordable housing, the provision
of transport or other infrastructure relating to the land, the funding of recurrent
expenditure relating to any of these, the monitoring of the planning impacts of
a development and the conservation or enhancement of the natural
environment.

12. The EP&A Act states that there need be no connection between development
to which a VPA applies and the object of expenditure of any money paid
under the agreement. Furthermore, planning agreements can be in addition
to, or in lieu (in part or full) of section 94 or section 94A development
contributions.

13. In respect of governance and probity, the Act outlines that:

- a planning agreement cannot impose an obligation on a planning authority
to grant development consent, or change an environmental planning
instrument.

- a planning agreement is void to the extent to which it requires or allows
anything to be done that would breach the Act, or the provisions of an
environmental planning instrument or development consent applying to
the relevant land.

- A consent authority cannot refuse to grant development consent on the
ground that a planning agreement has not been entered into in relation to
the proposed development or that the developer has not offered to enter
into such an agreement.

- A consent authority can require a planning agreement to be entered into
as a condition of a development consent, but only if it requires a planning
agreement that is in the terms of an offer made by the developer in
connection with the development application, or change to an
environmental planning instrument sought by the developer.

14. The EP&A Act and Regulation also includes controls relating to: form and
contents of planning agreement and explanatory notes, public notification and
exhibition; registration to title; copies to Minister; annual reporting, and public
inspection.

NSW STATE GOVERNMENT PRACTICE NOTES

15. Clause 25B(2) of the EP&A Regulation provides that the Secretary may issue
practice notes to assist parties in the preparation of planning agreements.
In 2005, the former Department of Infrastructure, Planning and Natural Resources (DIPNR) issued the Development Contributions Practice Notes - July 2005 (Practice Note). A copy of the Practice Note is provided at Attachment 2.

The Practice Note is not legally binding, but provides "best practice" guidance on how planning agreements should be used and also suggests that as best practice, consent authorities prepare a planning agreement policy.

Importantly, the Practice Note implicitly identifies the limited regulation of planning agreements under the EP&A Act and Regulation stating that “the EP&A Act and Regulation provide only a broad legislative framework for planning agreements, whereas this practice note seeks to provide best practice guidance in relation to their use.”

The Practice Note recommends that planning authorities apply an ‘acceptability test’ when assessing proposals for VPAs:

- 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 is not de minimis (that is benefits that are not wholly unrelated to 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.

In November 2016, the Department of Planning & Environment (DP&E) publicly exhibited a draft revised Practice Note, draft Planning Circular and draft Ministerial Direction on Planning Agreements (see Attachment 3).

At its meeting of 12 December 2016, CoP Council considered a report on a submission to the exhibited material and resolved as follows:

(a) That Council, in relation to the draft policy documents on guidance pertaining to Voluntary Planning Agreements (VPAs), endorse the attached draft submission (Attachment 5) for forwarding to the NSW Department of Planning and Environment.

(b) Further, that Council notes that the following key points are made in the draft submission:

i. A review of VPA practice is welcomed as the 2005 Practice Note on Development Contributions (as it relates to VPAs) is now considered to be out-of-date;

ii. Improved guidance from the State Government on the role of VPAs and how they should be applied is welcomed;

iii. Clarification is sought regarding a number of apparent contradictory and/or unclear statements in the draft policy documents;
iv. A preference is expressed for flexibility to be built into the Practice Note so as to allow innovative methods to utilise VPAs to achieve positive planning outcomes, including both for Councils and development proponents; and

v. Using VPAs on both a site-specific and broader systematic basis, subject to these being linked to a clear infrastructure delivery plan is supported.

22. A copy of CoP Council’s submission is provided at Attachment 4.

23. At the time of writing this report, the Department advised that they were still considering the submissions raised during the exhibition period. No formal change has been made to the Practice Note to date.

EXISTING PLANNING AGREEMENT POLICIES

24. On 12 May 2016, the City of Parramatta local government area (LGA) was proclaimed under the Local Government Act 1993. The City of Parramatta LGA includes (in part) land that was previously located within the former Parramatta City Council (PCC), Auburn Council, Holroyd Council, Hornsby Shire Council and The Hills Shire Council.

25. The VPA Policies of the former Council areas include:

- Parramatta City Council Planning Agreement Policy 3 March 2008;
- Hornsby Shire Council Policy on Planning Agreements 1 November 2007; and
- Auburn City Council Voluntary Planning Agreements Policy 2015.

26. Each of the policies sets out how that relevant Council will consider and process planning agreement offers. Copies of the above policies are provided at Attachments 5, 6 and 7. Neither The Hills Shire Council, nor the former Holroyd Council have, or had an adopted VPA Policy.

27. While there are a number of differences between the existing Parramatta VPA Policy (and proposed draft amended Policy) and the existing Hornsby Council and former Auburn Council Policies, there is nothing that would affect the fundamental operation or implementation of any planning agreement as each current policy enables consideration of a VPA on a case by case basis. Furthermore, none of the current policies are legally binding.

28. The key change that is proposed under the draft amended Policy that affects all three existing polices relates to the introduction of a value sharing methodology both inside and outside of Parramatta CBD.

29. Section 20 of the Proclamation that formed the City of Parramatta’ states that:

(1) The codes, plans, strategies and policies of the new council are to be, as far as practicable, a composite of the corresponding codes, plans, strategies and polices of each of the former councils (other than any altered council).
(2) This clause ceases to have effect in relation to a code, plan, strategy or policy when the new council adopts a code, plan, strategy or policy that replaces that code, plan, strategy or policy.

(3) This clause does not apply to the extent to which it is inconsistent with any other provision of this Proclamation.

30. The draft amended Policy would apply to the entire City of Parramatta LGA and would replace any planning agreement policy that may have applied to land that was formerly located within Parramatta, The Hills, Hornsby, Holroyd or Auburn LGAs.

LEGAL STATUS OF COUNCIL POLICIES

31. The EP&A Act and Regulation does not require a planning authority to prepare a policy regarding planning agreements. However, without a detailed and robust policy there could be an inconsistent approach to planning agreements.

32. Not all planning authorities in New South Wales have published policies and procedures in place on the use of planning agreements, however the 2005 Practice Note recommends that councils do prepare such policies and procedures as best practice.

33. A developed planning agreement policy would highlight how planning agreements can be used and provide guidance and transparency on the planning agreement process, ensuring greater certainty for the Council, developers and the public.

34. It is intended that the Council and all persons dealing with the Council in relation to planning agreements would follow the policy to the fullest extent possible.

SUMMARY OF PLANNING AGREEMENTS IN PARRAMATTA LGA

35. As at 12 May 2016, the former Parramatta City Council had executed 20 Planning Agreements. There are 5 executed planning agreements from The Hills Council relating to land at Carlingford, and a further 7 executed planning agreements from the former Auburn Council relating to land at Wentworth Point and Carter Street (Homebush).

36. At the time of writing this report (May 2017), City of Parramatta Council had approximately 50 Planning agreements at various stages of completion, including some of which had been executed and deliverables completed through to agreements still in negotiation.

37. Of the executed planning agreements 9 had been finalised, and 18 were in the process of being delivered. Approximately 6 planning agreements did not proceed to execution for various reasons, while the remaining draft agreements are still in the process of negotiation and/or drafting. The executed planning agreements relate to land across the local government area, however the majority related to land in or surrounding the Parramatta CBD.
38. The types of contributions delivered (or to be delivered) under the planning agreements include:
- monetary contributions toward public infrastructure of facilities;
- public infrastructure works;
- land dedication, easements and the like;
- dedication of units for affordable housing; or
- a combination of the above.

39. The applications associated with the executed planning agreements have included:
- planning proposal applications seeking to amend land use planning controls such as zoning, maximum building height, floor space ratio (FSR) or the like;
- development applications or modifications of consent seeking a variation to existing planning controls (such as maximum building height or FSR) under Clause 4.6 of Parramatta Local Environmental Plan 2011;
- development applications seeking to provide works in kind or a material public benefit in lieu of payment of Section 94A development contributions required by a condition of an existing development consent.
- development applications requiring a Planning Agreement to be entered into to enable the dedication of land free of cost to CoP Council as agreed by the land owner/developer.

40. The value of the executed VPAs as a percentage of the associated land value uplift varies considerably from 5% to 55%, where land value uplift is defined as the increase in the unimproved land value arising from an instrument change or the granting of development consent which allows development to exceed current development standards under Parramatta Local Environmental Plan 2011, or any other planning instrument.

EXTERNAL AUDITS

41. In 2012, an external audit was undertaken by O’Connor Marsden, in relation to the former PCC Council’s development contribution matters. As part of this audit, the PCC Planning Agreements Policy was reviewed. In respect of the Policy, the audit made the following recommendation:

When the Council’s Planning Agreements Policy is next revised the first step in the negotiation process should be rewritten. The representatives of Council and the developer should conduct initial discussions to identify the broad terms of the Voluntary Planning Agreement being proposed. These first discussions are not intended to negotiate a Voluntary Planning Agreement but to document the developer’s intentions and to explain Council’s policy.

Face to face discussions with developers should be held with two senior Council officers attending. The second step in the negotiation process, which requires the matter to be reported to a Meeting of Council for Council to formally decide whether to commence negotiations on a planning agreement, should be retained.

42. The role of staff in processing planning agreements is discussed further detail under the heading ‘Delegation and staff roles in the negotiation and preparation process’.
43. In January 2017 a further review of CoP Council’s VPA processes was undertaken by City Plan Services. The review made a number of recommendations to the existing processes, and included a number of suggested changes to the existing Parramatta VPA Policy as documented at Attachment 8 and discussed further in this report.

INTERNAL PROCESS REVIEW

44. During 2015, an internal process review was initiated and was intended to identify: key issues within the current VPA process; learnings to date; and opportunities for improvement.

45. The former Parramatta City Council business units interviewed as part of the review included Land Use Planning; Legal Services; Finance; Development Assessment Services; Open Space & Natural Resources; Civil Infrastructure; Asset Services & Property Management; Place Services; Traffic and Transport Planning; Social Outcomes and Urban Design. A summary of the internal review findings are provided at Attachment 9.

COUNCIL RESOLUTIONS

46. Since 2015, the former Parramatta City Council (PCC) and current City of Parramatta (CoP) Council has made a number of resolutions relating to Planning Agreements. Each of the relevant resolutions provided at Attachment 10.

VALUE SHARING BACKGROUND HISTORY

47. CoP Council at its meeting 27th June 2016 resolved to defer consideration of value sharing mechanism to allow completion of legal advice, stakeholder consultation, peer review and preparation of additional documentation for Council’s consideration. A brief outline on the progress of the value sharing mechanism since June 2016 is provided below. It is noted that further detail is provided in CoP Council’s report of 10 April 2017 (see Attachment 11).

A. An independent legal advice was sought regarding CoP Council’s capability to include value sharing in the Planning Proposal for Parramatta CBD. The advice provided to CoP Council in November 2016 confirmed the acceptability of Council’s proposed approach.

B. In July 2016, CoP Council wrote to the Greater Sydney Commission (GSC) to coordinate State Government input into the future infrastructure for the CBD. Council officers subsequently met with officers from both the GSC and Department of Planning and Environment to review a draft of the local infrastructure needs analysis for the Parramatta CBD, and written feedback was received on the draft.

C. An independent peer review of Parramatta Council’s past work on value sharing was undertaken by Aurecon and sub consultants Land Econ Group. The Peer Review states that the policy steps were carefully considered, well researched and consistent in approach, and that a PUVS mechanism (implemented via voluntary planning agreements) is an important funding source for additional community infrastructure that will
support the overall CBD strategy The document dated February 2017 was publicly exhibited in early 2017.

D. A Discussion Paper titled *Infrastructure Planning and Funding in the Parramatta CBD* and preparation of a Draft Infrastructure Needs Analysis were prepared by CoP Council officers in collaboration with Auercon dated March 2017. These documents were also publicly exhibited in early 2017.

E. On 13 March 2017 an Industry Stakeholder Forum was undertaken to launch the exhibition of the Discussion Paper, Peer Review and Draft Infrastructure Needs Analysis, with approximately 70 key stakeholders invited to attend. This included relevant peak body organisations, State government agencies, proponents of planning proposals within Parramatta CBD, and peers in local government.

48. On 10 April 2017, following the exhibition of the Discussion Paper, Peer Review and Draft Infrastructure Needs Analysis, CoP Council resolved to continue to support the inclusion of a value sharing mechanism in the Parramatta CBD Planning Proposal and resolved to prepare a Draft Infrastructure Strategy for the Parramatta CBD, including a Draft Development Guideline containing a Phase 1 value sharing rate of $150/sqm (20%) and a Phase 2 value sharing rate of $375/sqm (50%). These documents (along with a new Section 94A plan) were resolved to be exhibited alongside the Parramatta CBD Planning Proposal.

49. CoP Council also resolved on 10 April 2017 that issues raised during the exhibition of the Discussion Paper, Peer Review and Draft Infrastructure Needs Analysis which pertained to VPA implementation be considered as part of a draft update to CoP Council’s VPA policy, and that this be the subject of a separate report to Council. Consideration of relevant submissions are provided are provided at Attachment 12. A full copy of the CoP Council resolution of 10 April 2017 is provided at Attachment 13.

**PROPOSED VPA POLICY AMENDMENTS**

50. A number of changes are recommended to be made to Parramatta Council’s Planning Agreements Policy. The intention of these changes is to ensure a consistent approach is undertaken in the negotiation and preparation of planning agreements, providing a greater certainty for CoP Council, developers and the public.

51. The changes also seek to address some of the key issues raised during internal and external reviews of the planning agreements process, whilst also considering issues raised as a result of public exhibition and stakeholder consultation relating to value sharing. The recommended Policy amendments are summarised below.

(a) Introduction of a value sharing approach for both CBD and non CBD locations

(b) Provision of templates for Letter of Offer, Planning Agreement; and Explanatory Note.

(c) Insertion of relevant definitions into the Policy;
(d) Clarification of the relationship between CoP Council’s VPA Policy and CoP Council’s corporate strategic documents and development contribution plans;

(e) Clarification of the public benefits that will be considered under a planning agreement;

(f) Specification of the methodology to value public benefits and land value uplift, including relationship to conditions of development consent;

(g) Confirmation that planning agreements will be in addition to s94 or s94A development contribution (except where the planning agreement is specifically sought to provide material public benefit (MPB) or works in kind (WIK) in lieu of payment of development contributions) or in other circumstances as agreed by CoP Council;

(h) Detailing criteria controlling when CoP Council will consider a planning agreement in lieu of payment of development contributions required by an existing development consent;

(i) The planning agreement policy will clarify the steps in the process including:
   • timing for commencement and finalisation of planning agreement negotiations;
   • nomination of how an offer can be made,
   • identification of who will assess the offer;
   • nomination of staff and councillor roles and responsibilities, including potential to nominate 3rd parties to negotiate; and
   • delegations to CEO or ‘VPA Officer’ to negotiate and prepare a planning agreement.

(j) Preparation of consistent clauses within planning agreements including standard clauses that deal with:
   • timing for delivery of planning agreement obligations;
   • provision of security; registration and removal from property title;
   • indexation of monetary contributions;
   • defects liability period,
   • defects liability security;
   • provision of detailed design plans and documentation;
   • mandatory inspections;
   • introduction of mandatory maintenance contribution; and
   • introduction of post execution administrative fees.

(k) Insertion of clause relating to public access to planning agreements.

52. The key policy changes are discussed in further detail in this report.

PLANNING AGREEMENT VALUE

Justification for value sharing

53. Recognition of value sharing as a means of delivering infrastructure is widely acknowledged and has been investigated by government at all levels. A report on a Commonwealth Parliamentary Inquiry into the role of transport connectivity on stimulating development and economic activity released in
November 2016 included as one of the focus points, the role of value capture and other economic instruments in delivering transport infrastructure.

54. In relation to value capture the Inquiry Committee made a number of recommendations included at Attachment 14.

55. This acknowledgment of value sharing is also documented in the NSW State Government’s draft District Plans, released in November 2016 by the Greater Sydney Commission, relating to the Sydney Metropolitan region.

56. Section 1.2.3 of the Draft West Central District Plan, that relates to the area comprising Blacktown, Cumberland, Parramatta and The Hills local government areas, states that:

Value sharing uses part of the economic uplift that new infrastructure and planning generates to help fund that infrastructure. New transport infrastructure, for example, can unlock a number of ‘benefit streams’, including direct transport benefits such as reduced travel times, and wider benefits such as reduced congestion and lower fuel consumption. When new or upgraded infrastructure is provided in an area, many of these benefits are effectively monetised because local land values increase, reflecting the market’s willingness to pay for these benefits. Value sharing enables the funder of the infrastructure – for example, the NSW Government or a local council – to participate in the market uplift and offset some of its costs.

If properly executed, value sharing can:

- unlock new funding to make economically beneficial infrastructure more affordable
- spread the costs of new infrastructure more equitably among its beneficiaries
- improve projects by providing incentives for governments to plan and design infrastructure with wider land use benefits in mind.

57. While neither the Commonwealth Inquiry recommendations, nor the draft West Central District Plan establishes a value sharing rate, they do recognise it as an appropriate mechanism to deliver infrastructure.

58. However, in response to the Department’s exhibition of a draft revised Practice Note, draft Planning Circular and draft Ministerial Direction on Planning Agreements, the Independent Pricing and Regulatory Tribunal (IPART) [ NSW Government’s independent pricing regulator of certain industries] prepared a submission which raised a number of points regarding VPAS, with one key area focusing on ‘mutual benefit’ and suggesting that:

As a guide, it would be reasonable for value capture policies by councils to capture a 50% share of the land value uplift.

- The 50% share would provide a possible starting point for negotiations, still allowing flexibility for developers and councils to negotiate different outcomes, depending on the context of the development.
- The share of the land value uplift captured by the council should exclude any benefits provided by the developer to address the impact of the development on service and infrastructure needs (which satisfy the nexus principle). Therefore, it would help to ensure that the additional capture of profit delivers broader benefits to the community.

- This approach, which reflects some councils’ existing policies, would allow the council to capture a portion of the value for the general benefit of the community - explicitly as a tax on development - but allow the developer to gain an equal share of the uplift. This would better compensate developers for their risk.

- These policies should form part of the council’s strategic Infrastructure planning, thereby providing a clearer signal of the tax to developers.

- In circumstances where this share of the uplift compromises the development’s feasibility, a lower share should be considered, supported by an open book assessment if necessary. This would ensure the development can still proceed when the proposal would otherwise be accepted in the planning assessment process.

- The Practice Note should provide guidance about how the value of the uplift would be measured. The uplift could be measured based on the value of the land immediately prior to the council decision, and the value of the land immediately after. Land values may include a speculative component, whereby a site’s value increases when there is anticipation of a potential zoning. This could also be included in calculating the uplift as a result of the planning decision, which might result in the uplift being greater than the difference between the land value and what the developer actually paid for the site.

**Background on Planning Agreement Values to date**

59. Parramatta Council officer’s approach on planning agreements to date has been on a case-by-case basis. A review of the land value uplift being sought by a planning proposal or development application was undertaken and compared as a percentage to the value of the planning agreement offer made by the developer.

60. Parramatta Council officer’s approach was that the planning agreement value should be equivalent to 50% of the land value uplift. The justification for this value was as a result of work undertaken by PCC in 2012 in collaboration with Peter Phibbs (Professor of Urban Management and Planning at Western Sydney University) and Stewart Lawler (Land Economist and Property Developer) to prepare a ‘Land Value Calculator’ to provide a transparent method for calculating the value of uplift achieved through planning control amendments.

61. It is noted that the ‘calculator’ was not formally reported to PCC for endorsement, but was sought to provide a best practice guideline to staff to be used to transparently negotiate public benefit through the planning agreement process.
62. The calculator was developed with particular emphasis on achieving mechanisms to deliver an ‘Affordable Housing Bank’ as identified in PCC’s adopted Affordable Housing Policy and Implementation Plan (2009). One of the mechanisms for meeting a component of its affordable housing targets was to acquire a percentage of the uplift value created through changes to the land use planning framework.

63. In preparing the calculator, the consultants looked at Australian and International practice of generating public benefits from land value uplift, and addressed why land value should be charged, set out criteria for how a fair value uplift charge would work, and established a rationale for adopting a ‘50/50 split in uplift’.

64. The justification for seeking a proportion the uplift as public benefit is detailed as follows:

   *It is an attractive method for funding a variety of public projects because it is not generating undue pressure on development costs and hence affordability. Rezoning a piece of land or relaxing planning standards in most cases leads to an increase in the value of development that takes place on the land. Unless the original landowner has been able to assume that the rezoning was a fait accompli, the new land owner (usually the proponent for the rezoning) has been able to purchase the land without paying a land charge for the additional development that will be permitted on that site. This provides a bonus or windfall for the new owner. If this bonus is shared with the public, then the development costs for the site will not be any larger than normal developments.*

65. The rationale for suggesting a 50/50 split in uplift as documented in the associated Handbook titled *Handbook for Parramatta City Council Value Uplift Calculator 2012*, is as follows:

   *Some planning uplift systems share 75% of the value. There is no 'correct' answer but a position that equally shares the uplift with the developer seems more equitable. A 50% share also helps protects the profitability of the developer if some unexpected problems occur on the site.*

66. The Handbook goes on to say that:

   *Although this report suggests a 50/50 split, Parramatta City Council will need to decide what value to use. Key issues include:*

   - The value of the uplift needs to be estimated using an accurate method with an ability of the developer to seek an independent review of the uplift estimate.
   - Where goods in kind are provided in lieu of cash these must be accurately valued and discounted by the proportion of use available to the end users of the development.
   - The process is essentially a negotiation. In some cases there may be mitigating circumstances regarding the costs a developer may face and Council may wish to reduce its share of the value uplift in order to facilitate the development.
• In this negotiation it would be helpful if Council staff that are familiar with development and development costs and risks could participate.

• Negotiations need to proceed on the basis that the inherent risks associated with development are acknowledged and that the pursuit of public benefit value sharing does not jeopardise the development proceeding

67. Parramatta Council officer’s approach was to aim for a planning agreement that delivered a value equivalent to 50% of the associated land value uplift, and that the eventual value be negotiated on a case by case basis.

Parramatta CBD

68. With respect to the Parramatta CBD, the need for alternate and innovative infrastructure funding mechanisms to meet the additional demands on the city’s infrastructure resulting from the significant increase in development potential is required if Parramatta is to evolve into a vibrant dual CBD of Sydney.

69. As previously included in this report, CoP Council at its meeting of 10 April 2017 resolved to continue to support the inclusion of a value sharing mechanism in the Parramatta CBD Planning Proposal, and authorised the preparation of a Draft Parramatta CBD Infrastructure Strategy to include (in part):

- A Phase 1 value sharing rate of 20% ($150/sqm); and
- A Phase 2 value sharing rate of 50% ($375/sqm).

70. As adopted on 10 April 2017, the value sharing mechanism would only apply to residential development; would be re-evaluated after five years of implementation, and would be subject to indexation.

Comparison with other centres

71. CoP Council officers have undertaken a review of the planning agreement policies within the greater Sydney Metropolitan Area to determine if any prescribed value sharing rate is applied (refer Attachment 15).

72. Policies of 29 Sydney metropolitan councils were reviewed. Of those, 9 either did not have a planning agreements policy or it was in draft form only. Of the remaining that did have a planning agreements policy, it was found that the majority of councils do not apply a standard value sharing mechanism, but rather undertake negotiations on a case by case basis.

73. There are eight (8) councils within the Sydney metropolitan area that do apply some form of standardised value sharing as acknowledged within a Planning Agreement Policy or via a Local Environmental Plan. These are summarised below.

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<tr>
<th>COUNCIL</th>
<th>RATE &amp; MECHANISM</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Sydney</td>
<td>Green Square: $475/m² via LEP clause in Sydney LEP 2012 and supplemented by a DCP and development guideline titled</td>
</tr>
</tbody>
</table>
Table 1: Summary of Sydney councils applying some form of standardised value sharing rates

<table>
<thead>
<tr>
<th>Council</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ryde</td>
<td>Macquarie Park: $250/m² via LEP clause in Ryde LEP 2014. Rates are included in Council’s Fees and Charges Schedule</td>
</tr>
<tr>
<td>Leichhardt (now part of Inner West Council)</td>
<td>50% of land value uplift (VPA Policy). Generally, in negotiating a VPA the Council will seek to quantify the uplift in value of the applicant's land based upon a valuation of the land at the current zoning or pre VPA standard; and compare this with the valuation of the land in the event that the post VPA change in instrument or planning control is allowed, less any additional costs the applicant may incur in realising the increased value.</td>
</tr>
<tr>
<td>Burwood</td>
<td>Bonus development up to 10% of the mapped FSR may be considered in exchange for community infrastructure. Variation of 10% “bonus” allowed by Clause 4.6 (Exceptions to Development standards) in Burwood LEP. Rate published in Council’s Fees and Charges Schedule and Policy titled Carrying out Bonus Development in the Public Interest is set at $1500/m².</td>
</tr>
<tr>
<td>Waverley</td>
<td>VPA contribution payable in exchange for up to 15% of floor space under a development application. Further uplift can be negotiated through a planning proposal. 10% of the value of all VPA negotiations will be in the form of monetary contributions to go towards affordable housing program. Valuation of uplift is done for each individual application and informs the VPA liability. 50% of the profit from the bonus floor space is to be provided as a negotiated form of public benefit in the VPA.</td>
</tr>
<tr>
<td>North Sydney</td>
<td>Developer initiated PPs (consistent with the St Leonards/Crows Nest Planning Study) are to provide infrastructure contributions formalised by a VPA. No specific rate set. Individual proposals are assessed and negotiated on their merits.</td>
</tr>
<tr>
<td>Georges River Council</td>
<td>VPA contribution is to be equal to 50% of the difference between the residential land value resulting from an instrument change or variation to planning controls and the residual land value under existing planning controls.</td>
</tr>
<tr>
<td>Liverpool Council</td>
<td>Where an application proposes a change to a SEPP or LEP – Waterfront developments – minimum $15,000 per dwelling and $150 per sqm of floor area for commercial, retail and industrial developments; and Other developments – minimum $10,000 per dwelling and $100 per sqm of floor area for commercial, retail and industrial developments.</td>
</tr>
</tbody>
</table>

74. It is noted that most of these polices have been in place for over 12 months, however, since the previous report to CoP Council in August 2016 on this matter, two new planning agreement polices have been created that introduce some form of value sharing criteria or numerical based rates. These new polices relate to the newly formed Georges River Council, and Liverpool Council.

75. Woollahra Council exhibited a draft Policy in March 2016, which included a 50% land value sharing mechanism. At its meeting of 23 May 2016, Woollahra Council resolved not to proceed with the Draft Woollahra Voluntary Planning Agreement Policy for the following reasons:

1. Council already has section 94 contributions and 94A levies that deal with issues raised in this policy.

2. This policy will give rise to increased development.
3. Concerns with the precedent set by the Voluntary Planning Agreement Policy.

4. Belief that the Voluntary Planning Agreement Policy will undermine the DCP and LEP.

5. Concerns with how the money generated from the Voluntary Planning Agreement Policy will be spent and the proximity of the public benefit as the test is the benefit to the developer.

6. Make it clear in an amalgamated environment that Council does not want this sort of delegation to the General Manager.

76. Cumberland City Council is currently in the process of preparing a new VPA Policy to apply to the newly formed LGA. One matter under investigation relates to a potential value sharing rate to be established by the Policy.

77. While the majority of Sydney councils do not currently apply a standardised approach to value sharing in negotiation of planning agreements, this is not necessarily as a result of a specific resolution not to follow such methodology. It may be that work has not been undertaken to inform a suitable value sharing methodology for the individual local government area.

78. Some councils, including Woollahra as discussed above, have indicated that they do not want to prepare a planning agreement policy, as this may be perceived as encouraging development and planning proposal applications.

Establishing Consistent Planning Agreement Value

79. One of the key inconsistencies of Parramatta Council’s planning agreement negotiations relates to the value delivered under the planning agreement, particularly in comparison to any value uplift being achieved by the associated planning proposal or development application.

80. As previously stated, the planning agreements executed to date have resulted in values between 5% and 55% of the land value uplift of the associated planning application.

81. This inconsistency creates uncertainty for CoP Council and developers in the negotiation phase. Where the value of the planning agreement is low, this may be perceived as delivering insufficient public benefit to the community and is also inequitable to other developers who have provided a greater share of the value uplift as public benefit.

82. While it is acknowledged that the planning agreement process is voluntary, and the process is subject to negotiation, establishment of a clear set of parameters provides for transparency for the community and certainty for developers and CoP Council.

83. It is noted that some developers previously raised objection to a ‘one size fits all’ approach. However, it is considered that applying a consistent approach delivers significant benefits and creates a ‘level playing field’ accounting for developers of different scale and experience. This approach also enables developers to reference this potential cost during the development feasibility analysis.
**Establishing Rates**

84. It is proposed that the Policy include a clause on the value of planning agreements which directs the value of the agreement.

85. In the case of the Parramatta CBD (boundaries defined by the Parramatta CBD Planning Proposal), the value sharing mechanism is to be included within the CBD Planning Proposal as adopted by CoP Council on 10 April 2017. If granted gateway determination, this will result in a draft Planning Instrument. The adopted position of 10 April 2017 will form the interim position for VPA negotiations relating to land within the CBD Planning Proposal area until a formal planning control amendment is achieved.

86. Alternatively, should the value sharing mechanism within the CBD Planning Proposal not be realised, then the rates applicable to the non CBD area (as discussed below) should be applied. CoP Council’s VPA policy would need to be amended to reflect this.

87. With respect to development outside of the Parramatta CBD, a policy position on value sharing is yet to be set. CoP Council should consider a policy position on planning agreements outside of the Parramatta CBD for the following reasons:
   (ii) provides a transparent, consistent, and equitable approach to the planning agreement negotiation process;
   (iii) provides certainty to applicants and developers; and
   (iv) ensures a suitable public benefit is achieved for the community.

88. It is recommended that the value for planning agreements being negotiated outside the Parramatta CBD be set at 50% of land value uplift (being the difference between existing floor space ratio and floor space ratio proposed by a planning proposal or development application). This would be subject to further review should any Special Infrastructure Contribution (SIC) Levy be introduced and apply to the relevant site. Other factors that affect project viability would also need to be considered and these may need to be reviewed as part of an ‘open book’ process where developers provide financial documentation to CoP Council indicating the impact of any VPA on the development feasibility.

89. An open book assessment would factor in the type of costs associated with the development as a whole, and the likely profit to be realised from development. This would be similar to methodology used by developers to determine development feasibility. If adopted by CoP Council, council officers would prepare a guideline document outlining the type of information to be provide in an open book analysis, how it will be assessed and by who.

90. CoP Council’s Property Development Team have the requisite resources for review of the open book analysis. However, where required, independent third parties could be engaged to undertake the analysis.

91. If adopted by CoP Council as part of the VPA Policy, the rates outside of the CBD would need to be reviewed every 5 years or at any other time at Council’s discretion. In particular, a review of the rates should be undertaken,
if there was an on-going pattern of ‘open book assessments’ indicating that a 50% land value uplift approach was affecting development feasibility.

92. While the rate proposed for outside the CBD is greater than phase 1 value sharing rate proposed for the Parramatta CBD, the CBD phase 1 rate was reduced to reflect a likely Special Infrastructure Contribution Levy (SIC), where the combined SIC levy and value sharing rate would collectively be in the order of 50%.

93. VPAs associated with applications outside the CBD will often be more sporadic and isolated from other projects that could also contribute to the same infrastructure. This is quite different to the CBD that has a broader catchment of potential sites able to contribute to a broad range of projects and as such rates of up to 50% value capture will more likely ensure the delivery of suitable infrastructure.

94. The proposed rate of 50% of land value uplift is consistent with both the IPART submission of the Department’s draft revised Practice Note on VPAs and PCC’s *Handbook for Parramatta City Council Value Uplift Calculator 2012*, which both seek to realise an approach that allows for equitable sharing of the uplift, with both documents seeking ‘mutual benefit’ and an ‘equitable’ outcome which allows developers and the public to gain an equal share in the uplift realised by variations to planning controls.

**OTHER PROPOSED POLICY CHANGES**

*Planning Agreement – Nominated Public Benefits*

95. It is recommended that a clause be included within the Policy outlining the types of public benefits that CoP Council may consider under a planning agreement.

96. In broad terms, a public benefit under a planning agreement could comprise either a monetary contribution; and/or delivery of infrastructure works free of cost; and/or dedication of land free of cost (or a combination of these), where the benefit is for a public purpose, and that meets the criteria nominated below:

- Infrastructure works that are identified in an existing development contribution plan; or strategic corporate document or other infrastructure delivery document adopted by the Council;

- Dedication of land in keeping with Council’s existing land reservation maps or an existing development contribution plan; or strategic corporate document or other infrastructure delivery document adopted by the Council; and/or

- Affordable housing in keeping with the needs of Council’s adopted Affordable Housing Policy; and/or

- Monetary contribution toward works, land dedication or affordable housing (including recoupment cost or recurrent expenditure including maintenance cost) in keeping with criteria nominated above; and/or
On an opportunity basis, as endorsed by the Council, that meet the following criteria:

- Will provide for a substantial material benefit to the community; and
- Meets a need of the community that was not identified (or known) at the time the contribution plan or corporate strategic documents were written; and/or
- Delivers infrastructure needs identified in ‘A Plan for Growing Sydney; or similar metropolitan strategy document.

97. The purpose of nominating the above criteria is to align infrastructure delivery via planning agreements with infrastructure identified within CoP Council’s existing infrastructure delivery documents. The Policy will however allow negotiation of the above on an opportunity basis where it can be demonstrated that the public benefit proposed to be delivered will meet an infrastructure priority that may not have been identified at the time CoP Council’s infrastructure delivery documents were prepared.

**Nominated public benefits relationship to Council resolutions**

98. With respect to PCC resolutions of 14 December 2015 and the 23 December 2015, each of these sought to expand the Planning Agreements Policy to identify key projects that could be delivered via planning agreements.

99. Each resolution included a specific type of project being:

(i) community facilities including possible expansion of performing arts facilities as resolved on 14 December 2015; and

(ii) River Foreshore Strategy and associated projects, Council’s major improvement projects, upgrades and delivery of new public domain and open spaces in the CBD as resolved on 23 December 2015.

However, each of these types of project categories are already identified in CoP Council’s corporate strategic documents and development contribution plans.

100. Section 3.2 of the Parramatta Civic Improvement Plan (CIP) being the s94A development contribution plan that applies to the Parramatta CBD identifies the need for a multi-purpose arts and cultural facility. The CIP states that the multi-purpose arts and cultural facility is a flexible space providing for a range of artistic pursuits with capacity to respond to changing community needs. It will provide for the following: theatre and dance studio; outdoor performance space; writing studio; media centre; visual arts studios; and music rooms.

101. Similarly, Section 3.1 of the CIP identifies Parramatta River foreshore park improvements incorporating a range of infrastructure and urban design improvements along the river. Section 2.0 of the CIP outlines a full range of public domain projects to be delivered throughout the CBD.

102. CoP Council’s Operation Plan and Delivery Plan also references the Parramatta River Strategy, open space public domain improvements and performing arts. As such, reference to these existing infrastructure documents within the Planning Agreements Policy will ensure that any infrastructure delivered via a planning agreement is consistent with the broader
infrastructure priorities already identified by Council in the 23 December 2015 resolution.

Valuation Methodology

103. To ensure a consistent approach is applied to the valuation of planning agreement deliverables it is recommended that parameters be included in the Policy outlining how CoP Council will value works and land dedication (including easements and affordable housing units and the like).

104. Documenting this in the Policy ensures transparency and enables developers and the public understand how valuations will be undertaken prior to negotiation commencing.

105. A number of key factors should apply:
   • Items that would ordinarily be required to achieve development consent should not be allocated value in a planning agreement;
   • Where land is to be dedicated but the developer will still seek to realise the applicable FSR then the land will be given a negligible value in a planning agreement. In other circumstances, land shall be valued in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.
   • Land valuations and quantity survey estimates should be undertaken by suitably qualified and experienced persons.
   • Where necessary an independent third party should be engaged to review valuation or quantity surveying information provided by Council and/or the applicant.
   • Third party costs to be borne by the developer.

106. A consistent methodology for valuing land value uplift must also be set out. As detailed in the draft Policy, it is recommended that this be based upon market evidence or hypothetical ‘before and after’ valuation rationale. Valuations should be undertaken by a suitably qualified and experienced person, and where necessary an independent third party may be engaged.

107. It is noted that Parramatta Council’s approach to date with respect to valuation of land dedication (and the like) has been somewhat inconsistent and a range of valuation methodologies have been applied. It is recommended that the Policy include a provision stating that where the floor space ratio applicable to the land to be dedicated will otherwise be included in the associated development, that the land be dedicated to CoP Council for one (1) dollar as otherwise the developer is double dipping by getting the benefit of the FSR attributable to the land, and a second payment or credited ‘value’ for the land itself.

Planning Agreement in lieu of development contributions

108. Parramatta Council has entered into a number of planning agreements where the developer has sought to provide material public benefits or works in kind in lieu of payment of development contributions. Where CoP Council has a Section 94a Development Contribution Plan, this alternate contribution can only be achieved via a planning agreement.

109. Where these agreements have occurred, they generally relate to approved developments where a significant development contribution is required (in
excess of $1 million). In most instances, the developer is seeking to undertake infrastructure works in proximity to their development site, which will ultimately improve the saleability of their development.

110. The benefit of doing this is that works can be delivered faster than might have been achieved by CoP Council, and the value of the work often exceeds the value of the otherwise applicable development contribution. However, if the works undertaken under the planning agreement have not been identified in a Contribution Plan, this would redirect funding away from works that are in the Contribution Plan, which may jeopardise CoP Council’s ability to deliver the obligations identified in the Contribution Plan.

111. It is recommended that the Policy set out clear parameters guiding when CoP Council may consider provision of a planning agreement in lieu of payment of development contribution, including the value of the otherwise applicable contribution (recommend over $500,000). It is recommended that the deliverable be works identified in a Contribution Plan.

112. The Policy would still allow CoP Council to consider an alternative to works in a contribution plan but only where Council is satisfied that it will provide a significant material benefit to the community.

113. It is recommended that where the works proposed to be delivered are not identified in an existing development contribution plan or corporate strategic document, that the Policy include a provision, seeking that the value of the work be significantly greater than the applicable development contribution. The reason for this is that the alternate deliverable:
  - Must provide a substantial material public benefit;
  - Must offset the redirection of funds away from priorities already identified by CoP Council’s development contribution plan;
  - Must provide a benefit to the wider community and not just be a mechanism to ensure the full value of the contribution is realised adjacent to the development site.

Delegation and staff roles in the negotiation and preparation process

114. As previously discussed under the heading ‘External Audits’, an external audit undertaken in 2012 recommended the retention of the requirement within PCC Planning Agreements Policy requiring a resolution of Council to formerly commence negotiation of a planning agreement. However, the audit of 2017 recommends that the delegations be given to the CEO to negotiate and prepare a VPA prior to seeking resolution of Council.

115. The current requirement of the PCC Policy to seek a Council resolution prior to commencing the VPA negotiation process can add unnecessary time delays to the developer in the negotiation process. Furthermore, it is impractical as it means that no discussions can be undertaken before a Council resolution is made. However, Councillors would normally want to know the type of deliverable being offered (in principle) before it determined whether to commence the negotiation process. Technically in accordance with the PCC policy, these initial discussions could not be undertaken prior to the resolution to commence the negotiation process.
116. It is recommended that the Policy be amended in line with the 2017 external audit recommendation to rename this step and that Council resolve to amend its Delegations Register to enable the CEO (and any other relevant staff he/she may identify) to be nominated as a ‘VPA Officer’ with authorisation to negotiate and prepare draft planning agreements. The terms of any draft agreement would always then be reported to CoP Council for endorsement prior to public exhibition.

117. The ultimate approval of the planning agreement would still be with the CoP Council who would need to authorise the planning agreement not only prior to public exhibition, but also prior to the finalisation and execution of the agreement.

118. Another recommendation of the 2017 external audit requires the identification of who will assess the VPA offer and their relationship to the assessment of the associated planning proposal or development application. The amended Policy seeks to separate the roles of the staff assessing the VPA and the person assessing the associated planning proposal or development application. However, where this is not practicable, then a peer review of the VPA negotiation is recommended.

119. The peer review would most likely be undertaken by a team not responsible for the associated application. For example, the current practice for VPAs associated with a development application (DA) is that the VPA assessment would be undertaken by the Land Use Planning Team, while the DA would be assessment by the Development Assessment Team. A similar approach could be undertaken where VPAs associated with Planning Proposals could be assessed or peer reviewed by say the Development Assessment Team, while the Planning Proposal would be assessed by the Land Use Planning Team.

120. It is noted that the other recommendations of the external audits have been included within the amended policy including; nomination of staff and councillor roles; formalisation of the steps in the planning agreement negotiation process; and ability to nominate a third party to negotiate. A copy of each recommendation and its address is provided at Attachment 8.

**Standard Templates**

121. It is recommended that the Policy include standard planning agreement and explanatory note templates. These templates have been prepared by a qualified solicitor and set out CoP Council’s minimum requirements.

122. A standardised template will ensure that legal drafting of the planning agreements remain consistent and will be easier for staff to project manage multiple planning agreements. This may also reduce the legal drafting costs which are ordinarily borne by the developer, and to date have consistently exceeded $10,000.

123. Provision of a draft template also improves transparency as it outlines CoP Council’s position on certain elements that are usually included within a planning agreement at the outset of the negotiation process.
124. The standard template will not reduce the developer’s ability to seek revisions to certain clauses, and such amendments can still be considered through the negotiation process.

125. A ‘Letter of Offer Template’ has also been prepared, again ensuring consistency, streamlining the process and reducing time delays resulting from individual drafting. The template documents also provide guidance to the developers as to what matters require consideration as part of the VPA process.

**Maintenance contribution**

126. As identified by the internal process review one current pitfall or risk to CoP Council, is that many planning agreements provide for new capital infrastructure that may not have been envisaged by CoP Council’s Asset Management Plan and Long Term Financial Plan, particularly with regard to maintenance costs.

127. It is recommended that parameters be included in the Policy to require that planning agreements deliver a contribution toward ongoing maintenance.

128. The maintenance contribution would be included in the negotiations at the value of the infrastructure included in the planning agreement, but would ensure that a percentage of that value be isolated for maintenance purposes.

129. As an alternate approach, CoP Council may require that the Policy include provisions requiring that where infrastructure is provided by the developer under a planning agreement, that the developer or registered proprietor of the land be required to maintain those assets for a minimum period (and be subject to security) and would be one of the issues negotiated with the developer.

130. The draft VPA Policy also includes a clause that requires that as part of an offer for works or assets, that the Developer may be required to provide documentation outlining the on-going maintenance, operating, and/or replacement costs to Council. An example might be the offer of commercial space to Council to be used for the operation of a community facility. These costs would need to be considered by CoP Council before accepting the VPA offer.

**Administrative Fees**

131. The internal process review highlighted the significant staff resource time involved in all stages of the planning agreement cycle.

132. While CoP Council currently seeks to recoup legal fees associated with the planning agreement preparation, it does not seek recovery of staff or resource costs associated over the entire life cycle.

133. It is recommended that the Policy reference the ability for CoP Council to recoup reasonable staff costs where appropriate, and also that administrative fees be included within CoP Council’s adopted Fees and Charges Schedule relating to specific matters such as the approval of detailed design plans, inspections, issue of certificate of practical completion and the like. It is noted
that the draft fees and charges (on exhibition at the time of writing this report) for 2017/18 have included administrative fees relating to the VPA process. These have been nominated as a ‘cost recovery’ charge.

**Timing of monetary contribution payments**

134. CoP Council’s preferred practice is that monetary contributions are paid either on execution of the planning agreement or prior to the issue of a construction certificate (often subject to a bank guarantee). This approach has generally been utilised by Parramatta Council to date. This timing is also consistent with what most other councils would require.

135. However, in response to concerns raised by industry stakeholders in considering the value sharing Discussion Paper and Industry Forum, the Policy proposes to alter the timing for payment of monetary contributions required under a planning agreement.

136. The proposed timing would be staged to allow 25% of the payment on execution of the agreement (or enable equivalent security provision to be provided), 50% of the payment prior to issue of a construction certificate (or enable equivalent security provision to be provided); and the outstanding payment to be provided prior to the issue of any occupation certificate. This timing is generally consistent with the timing required for the completion of any works/land dedication/ or other asset provision or dedication. The contribution would be subject to indexation at time of payment.

137. While the later timing for payment of a monetary contribution may delay CoP Council’s delivery of new infrastructure, it is seen as a way that CoP Council can reduce the impediment of value capture of the viability of new development projects. This is because the payment would be required at the end of the process, when developments are at, or nearing the settlement stage, and where the cash flow of the developer is likely to be in (or moving toward) a positive position.

**Provision of Security**

138. With respect to the provision of security the draft amended Policy has (for the most part) moved the security provision from VPA execution stage to prior to the issue of a construction certificate. However, the security in relation to the monetary contributions will be staged as previously outlined above.

139. While provision of security is intended to reduce the risk to CoP Council for VPA deliverables not being met, there are other mechanism that Council can also rely on (and currently uses) to ensure that VPA deliverables are realised. These include the following:

   (a) requirement for registration of VPA to property title (including ability for CoP Council to register a caveat on the land); and
   (b) inclusion of a condition of development consent on any subsequent development application requiring the obligations of the VPA to be met prior to the issue of any occupation certificate.

140. This approach will require greater onus by CoP Council to ensure all necessary steps are undertaken, and may require new processes to be
established by Council. This may include registration of the planning agreement to title by Council (with an administrative charge to be paid by the Developer). Internal processes already exist which requires that as part of the assessment of a development application that the assessment officer determines if a VPA relates to the land. New processes may need to be introduced to ensure this information is recorded against the property file to enable information relating to VPAs to be easily accessible to relevant staff.

APPLICATION TO COUNCIL LAND

141. The Policy specifies that the terms of the Policy, and the value sharing rates would also apply to any VPA that relates to CoP Council owned land. The Policy also establishes how the VPA negotiation and assessment would be undertaken by independent persons to ensure probity and consistency with CoP Council’s Policy requirements.

TRANSPARENCY, TRACKING AND RESPONSIVENESS

142. CoP Council at its meeting of 27 June 2016 resolved (in part):

That the matter be deferred and Council undertake the following actions:-

(7) Require that the Draft VPA Policy for the Parramatta CBD previously agreed to be presented to by Council by end of August 2017, also to consider legal and transparency issues as well as options for VPA negotiation parameters and implications for different geographic areas across the LGA.

143. Further, CoP Council at its meeting of 11 July 2016 resolved (in part):

(d) Further, that the draft policy on Voluntary Planning Agreements due in August also address issues of transparency, tracking and responsiveness.

144. The intention of the recommended Planning Agreements Policy is to provide transparency to the public and the developers by outlining Council’s adopted process and requirements.

145. Provision of standard templates, standardised value sharing mechanism and approach to valuation of planning agreements and land value uplift will ensure that planning agreement negotiations and outcomes are consistent.

146. The EP&A Act and Regulation set out requirements for Council to: publicly exhibit draft planning agreements, amendments or revocations; report on planning agreements within its annual report; and to make publicly available (free of cost) a register of planning agreements, as well as copies of all executed planning agreements and explanatory notes (including any amendments).

147. While CoP Council currently meets these legislative requirements, the public access to information could be improved, for example by providing such information on CoP Council’s website.
148. It is noted that a report is currently put to CoP Council at least 3 times per year (in March, June and September) reporting on the status of all planning agreements including those that have been executed and those which are still in the process of negotiation or drafting.

149. In addition, a process has commenced in relation to planning proposals to investigate whether it would be appropriate to put in place systems and processes that would allow an applicant to track online the progress of their planning proposal in a manner similar to tracking of development applications on CoP Council’s website. This process could also incorporate a similar tracking mechanism for draft VPAs.

150. In response to the public exhibition of value sharing material (Discussion Paper, Peer review and Needs Analysis) in early 2017, a submission raised the need for transparency in the use of funds collected under the value capture mechanism. Further information to address this could be included in the existing update reports to CoP Council.

INTERIM CONCLUSIONS

151. Parramatta Council’s planning agreement negotiations to date have resulted in a somewhat inconsistent approach with respect to the value of the agreement in comparison to value uplift being achieved by an associated planning proposal or development application. There has also been an ad-hoc approach to the delivery of infrastructure. This Policy amendment seeks to provide parameters that will streamline the process and create a more consistent and transparent process for CoP Council, developers and the public.

152. As detailed at Attachment 13, CoP Council at its meeting of 10 April 2017 resolved to include a value sharing mechanism in the Parramatta CBD Planning proposal, including:
- A Phase 1 value sharing rate of 20% ($150/sqm); and
- A Phase 2 value sharing rate of 50% ($375/sqm).

153. Should the value sharing mechanism within the CBD Planning Proposal not be realised, then the rates applicable to the non CBD area (as discussed below) should be applied. CoP Council’s VPA policy would need to be amended to reflect this.

154. It is recommended that CoP Council adopt a value sharing position for VPAs negotiated outside of the Parramatta CBD; and that these rates be set at 50% of the land value uplift to calculated based on site specific land valuations, and having regarding to any Special Infrastructure Contribution or open book analysis.

CONSULTATION

155. Should CoP Council endorse the draft amended Voluntary Planning Agreements Policy for public exhibition purpose, the draft document would be publicly exhibited for a minimum period of 28 days.

156. The draft Policy and associated documentation would be provided on CoP Council’s website, administration building and all libraries. Notices would be
provided in the four (4) relevant newspapers that cover the City of Parramatta LGA. These are the Parramatta Advertiser, Hills Shire Times, Northern District Times and Auburn Review.

157. Written notification of the draft policy would be provided to the following:
   - Applicants of all planning proposals lodged over the last 3 years;
   - Database of planning consultants and developers previously notified of CoP Council’s value sharing mechanism associated with Parramatta CBD planning proposal;
   - Local government and State government bodies and professional bodies invited to attend Industry Forum on value sharing in March 2017; and
   - IPART

NEXT STEPS

158. If endorsed by CoP Council, the draft Policy would be public exhibited as outlined in the section above titled ‘Consultation’.

159. Outcomes of the public exhibition process would be reported back to CoP Council prior to the adoption of any revised Policy.

160. Recommendations of any future report would include a formal request to modify CoP Council’s delegations register, and to resolve to review any value sharing rates outside of Parramatta CBD on a periodic basis. The Policy may also need to be updated with regard to the Parramatta CBD area should the value sharing mechanism not be included within the Parramatta CBD Planning Proposal.

Diane Galea
Senior Project Officer Land Use Planning

Robert Cologna
Service Manager Land Use Planning

Sue Weatherley
Director Strategic Outcomes and Development

Greg Dyer
Chief Executive Officer

ATTACHMENTS:
1 Draft City of Parramatta Council Voluntary Planning Agreements Policy (Amendment 1) 98 Pages
2 Planning Agreement Practice Note 2005 24 Pages
3 Draft Practice Note, Planning Circular and Ministerial Direction November 2016 33 Pages
4 City of Parramatta Council Submission on Draft VPA Practice Note, Circular and Ministerial Direction 6 Pages
5 Parramatta City Council Voluntary Planning Agreements Policy 2008 27 Pages
6 Hornsby Shire Council Policy on Planning Agreements 2007 35 Pages
7 Auburn Council Voluntary Planning Agreements Policy 2015 14 Pages
8 Summary of 2017 External Audit Recommendations - Changes to VPA Policy 2 Pages
9 Summary of Parramatta City Council Internal Review Findings 2015 1 Page
10 Parramatta City Council and City of Parramatta Council resolutions on VPA Policy related matters since 2015 4 Pages
11 City of Parramatta Council Report 10 April 2017 Outcomes of Public Exhibition of Discussion Paper on Infrastructure Planning & Funding in Parramatta CBD 12 Pages
12 Address of Submissions relating to VPA Policy raised in response to Discussion Paper on Infrastructure Planning & Funding in Parramatta CBD 2 Pages
13 Council Resolution 10 April 2017 Outcomes of Public Exhibition of Discussion Paper on Infrastructure Planning & Funding in Parramatta CBD 1 Page
14 Parliamentary Inquiry Recommendations 1 Page
15 Review of Sydney Metropolitan Councils VPA Policies May 2017 2 Pages

REFERENCE MATERIAL