



# CITY OF PARRAMATTA

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## **City of Parramatta Planning Agreements Policy (Amendment 1)**

City of Parramatta Council

Adopted by Council 26 November 2018

### Version Control

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**Appendix A Land Application & Parramatta CBD Maps**

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## 1. POLICY STATEMENT

### 1.1 *Name of this Policy*

This policy is known as the *City of Parramatta Council Planning Agreements Policy* ("Policy").

### 1.2 *Application of the Policy and commencement*

This Policy applies to all planning agreements entered into by City of Parramatta Council ("**Council**"), and applies to all land in the City of Parramatta local government area ("**City of Parramatta LGA**"), including any land owned by the Council. This Policy also applies to land outside of the City of Parramatta LGA in case of a joint planning agreement between Council and another council or planning authority for land outside of the City of Parramatta LGA.

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

### 1.3 *Purpose of this Policy*

The purpose of this Policy is to set out Council's policy and procedures relating to planning agreements under section 7.4 of the Act.

### 1.4 *Savings Provision*

#### 1.4.1 *Planning agreements associated with Planning Proposals that had not received Gateway Determination at the time of adopting this policy*

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

#### 1.4.2 *Planning agreements associated with Planning Proposals that had received Gateway Determination at the time of adopting this policy*

Despite the terms of Clause 2.5 of this Policy, for planning agreements associated with Planning Proposals which had already received Gateway Determination at the time of adopting this Policy, Council's position on the value of the Planning Agreement is to be as follows:

- (a) For those Planning Proposals inside the Parramatta CBD: the CBD value sharing framework is to apply (unless an alternate agreement with the Applicant had already been reached at the time of adopting this Policy, in which case, Council will honour that agreement).
- (b) For those Planning Proposals outside the Parramatta CBD where Council and the Applicant had already reached an in-principle agreement about the value of the Planning Agreement at the time of adopting this Policy: Council will honour the agreement reached with no change to the agreed value.
- (c) For those Planning Proposals outside the Parramatta CBD where Council and the Applicant had not reached an in-principle agreement about the value of the VPA at the time of adopting this Policy, but where a previous Council resolution had nominated a specific rate as Council's negotiating position: there will be no change to this negotiating position.
- (d) For those Planning Proposals outside the Parramatta CBD, where Council and the Applicant had not reached an in-principle agreement about the value of a VPA at the time of adopting this Policy, and where, at the time of adopting this Policy, there was no existing Council resolution nominating a specific rate as Council's negotiating position: these are to be dealt with on a case-by-case basis, led by the following:
  - Any previous Council resolutions which relate to Council's position on that particular matter;
  - the particular infrastructure impacts from development enabled by the Planning Proposal; and
  - the public interest.

The remainder of the terms of this Policy are to apply to all the planning agreements described in Clause 1.4.2.

#### *1.4.3 Planning agreements associated with Development Applications*

At the time of adoption, this Policy applies to any planning agreement associated with any Development Application (except those that were already agreed in-principle by both parties at the time of adopting this Policy).

#### *1.4.4 Variations to planning agreements solely relating to aligning the planning agreement to this Policy*

Council will not accept variations to any draft planning agreement already endorsed by Council or its delegate or planning agreements already executed where the changes sought solely relate to aligning the planning agreement to Policy parameters which may be seen to be more favourable for the applicant than those previously agreed by both parties.

### **1.5 Objectives of this Policy**

The objectives of this Policy are:

- (a) to establish a fair, transparent and accountable framework governing the use and preparation of planning agreements by the Council;
- (b) to enhance the range and extent of planning agreement contributions made by development towards public facilities in the Council's area;
- (c) to set out the Council's policy and procedures relating to the use of planning agreements;
- (d) to ensure a consistent approach is undertaken in the negotiation and preparation of all planning agreements that is efficient, fair and accountable;
- (e) to supplement the application of section 7.11 or section 7.12 of the Act;
- (f) to facilitate the provision of public facilities, services and amenity outcomes that align with, or are not inconsistent with, Council's corporate and strategic planning context, including Council's Community Strategic Plan, Delivery Plan, Operational Plan, Development Contribution Plans or other Infrastructure Planning Documents;
- (g) to ensure the planning agreement contributions delivered under a planning agreement are consistent with any other policies adopted by Council requiring the provision of infrastructure in connection with any planning proposal or development application that will result in increased development potential and consequent increased demand for public amenities and public services within Council's area;
- (h) to ensure greater probity and establish a probity framework for the negotiation, preparation and implementation of planning agreements;
- (i) to provide a level of certainty for developers when negotiating planning agreements;
- (j) 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.

### **1.6 What does this Policy set out?**

This Policy sets out Council's approach to the use of planning agreements through negotiation when considering planning proposals or development applications in the City of Parramatta LGA. In particular, this Policy sets out:

- (a) the circumstances in which Council would ordinarily consider entering into a planning agreement;
- (b) the matters ordinarily covered by a planning agreement;
- (c) the form of planning agreement contributions ordinarily sought under a planning agreement;
- (d) the kinds of planning agreement contributions ordinarily sought and, in relation to each kind of benefit, whether it involves a planning benefit;

- (e) the method for determining the value of planning agreement contributions and whether that method involves standard charging;
- (f) 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;
- (g) when, how and where planning agreement contributions will be provided;
- (h) the procedures for negotiating and entering into planning agreements; and
- (i) the Council's policies on other matters relating to planning agreements.

### **1.7 Legal policy context**

The current legal and procedural framework for planning agreement obligations is set out in Division 7.1 of Part 7 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" dated July 2005 has been issued by the Department of Planning and Environment 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, including any amendments to the Practice Note or any replacement Practice Note. If there is any inconsistency between the Practice Note and this Policy, then Council will be guided by this Policy.

As at the date of this Policy, the Department of Planning and Environment had issued a draft Practice Note for comment. This Policy may be amended, if required, for consistency with any revised Practice Note.

This Policy is not legally binding. It is intended to provide a guide for Council officers and all persons dealing with Council concerning planning agreements. Council considers that the process involved in negotiating and finalising planning agreements will be more efficient and effective if this Policy is followed to the fullest extent possible.

### **1.8 When may Council enter into a planning agreement**

Section 7.4 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 Council (or two or more planning authorities, such as two or more councils and the Minister for Planning) and a person (the developer):

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

The key types of applications for which Council may, at its discretion, enter into a planning agreement are:

- (a) a planning proposal; and
- (b) a development application (or an application to modify a development consent).

### **1.9 Mandatory requirements of a planning agreement**

Section 7.4 (3) of the Act requires planning agreements to include provisions specifying:

- (a) a description of the land to which the planning agreement applies;
- (b) a description of the change to the environmental planning instrument to which the agreement applies, or the development to which the planning agreement applies;

- (c) the nature and extent of the provision to be made by the developer under the planning 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 7.11, 7.12, or 7.24 of the Act to the development;
- (e) if the agreement does not exclude the application of section 7.11 of the Act to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a monetary development contribution under section 7.11 of the Act;
- (f) a mechanism for the resolution of disputes under the agreement; and
- (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

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 entered into by Council must contain the provisions as required by section 7.4 (3) of the Act.

Any planning agreement prepared by Council will be consistent with this Policy and developers can expect that such planning agreements will contain clauses that reflect Council's requirements as set out in this Policy.

A template planning agreement is provided in conjunction with this Policy and will be available on Council's website. This template planning agreement should be used by developers as the general basis for a planning agreement with Council. The specific terms of each planning agreement will be negotiated with and determined by Council in accordance with this Policy.

#### **1.10 Explanatory note**

Clause 25E(1) of the Regulation requires an explanatory note to be exhibited with each proposed planning agreement. The explanatory note must:

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

Each explanatory note must be prepared jointly by the parties proposing to enter into the planning agreement.

A template explanatory note is provided in conjunction with this Policy and will be available on Council's website. This template explanatory note is based on the template planning agreement in conjunction with this Policy. The specific terms of each explanatory note will depend on the terms of the planning agreement to which it relates.

#### **1.11 Relationship to corporate strategic documents**

A planning agreement should facilitate the provision of public facilities, services and amenity outcomes that align with, or are not inconsistent with, Council's corporate and strategic planning context.

Council's corporate strategic plans include the Long Term Community Strategic Plan, four year Delivery Plan and one year Operational Plan. This Policy aims to ensure that planning agreement contributions achieved via a planning agreement are consistent with infrastructure priorities identified in Council's corporate strategic documents.



### ***1.12 Relationship of planning agreements to development contribution plans and infrastructure delivery plans***

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

This does not mean that contributions offered under planning agreements can only be for the infrastructure or public amenities and services specified in those plans. Planning agreements provide additional flexibility to deliver items that are not identified in a development contributions plan (as referred to in section 7.18 of the Act) or the like, but in certain circumstances may achieve delivery of higher priority projects that were not identified at the time the contributions plan or infrastructure delivery plan was created.

Acceptance of any infrastructure works not identified in Council's existing development contribution plans and /or other infrastructure delivery plans will be at the sole discretion of Council.

### ***1.13 How are planning agreement contributions different to Section 7.11 and 7.12 development contributions and conditions of development consent?***

In this Policy, planning agreement contributions refer to the combined planning obligations to be delivered under a planning agreement. This may include a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used for or applied towards a public purpose.

Where the planning agreement is made in conjunction with a planning proposal or development application (including modification of consent) that is seeking to vary Council's planning controls to improve the land value, then the planning agreement contributions should relate to the land value uplift sought. In this case s7.11 or s7.12 development contributions would still need to be paid in addition to any planning agreement contribution and required via an appropriate condition on an existing or future development consent. See also **clause 2.8**.

Where a planning agreement is proposed to deliver works in kind or material public benefit in lieu of 7.11 or 7.12 development contributions levied on an existing development consent, then the planning agreement contribution would in this case be an alternate to the development contributions (either in full or part). See also **clauses 2.8 and 2.9**.

Where certain infrastructure provision or works would normally be required to be provided as part of a development by way of a condition of development consent, then these would be considered to be in addition to any planning agreement contribution. No reduction in the planning agreement contribution would be accepted in recognition of works already required via a condition of consent. See also **clause 2.10**.

## **PRINCIPLES FOR PLANNING AGREEMENTS**

### **2.1 *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) 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) Council will not use planning agreements for any purpose other than a proper planning purpose.
- (d) The consideration, negotiation and assessment of a proposed planning agreement will, to the extent reasonably practicable, be separate from the consideration of the planning merits of a development application or a planning proposal.
- (e) Council will not use planning agreements as a means to overcome revenue raising or spending prohibitions to which it is subject or for other improper purposes.
- (f) 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.
- (g) Council will prefer benefits under a planning agreement that have some direct relationship to particular development, unless the benefit aligns to Council's corporate strategic documents, existing development contribution plans or other infrastructure delivery documents adopted by Council.
- (h) When considering a planning proposal or development application, Council will not give undue weight to a planning agreement.
- (i) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a draft planning agreement.
- (j) Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements.
- (k) Where Council has a commercial interest in development the subject of a planning agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development.
- (l) Council generally will not agree to a planning agreement providing for any alleged surplus value under a planning agreement being refunded to the developer or offset against 7.11 or 7.12 development contributions required to be made by the developer in respect of other development in the City of Parramatta LGA.

### **2.2 *Acceptability test to be applied to all planning agreements***

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

- (a) Does the proposed planning agreement satisfy the requirements contained in the Act and the Regulation?
- (b) Is the proposed planning agreement directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development?
- (c) Does the planning agreement provide for public benefits that align with Council's corporate strategic documents, existing development contribution plans or other infrastructure delivery documents adopted by Council? Do the public benefits bear a relationship to the development? If the benefits are wholly unrelated to the development, is there planning justification for the provision of such benefits?
- (d) Will the proposed planning agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest?

- (e) Does the proposed planning agreement provide for a reasonable means of achieving the relevant purposes and outcomes as well as adequate security in the event of default?
- (f) Does the proposed planning agreement meet the principles governing Council's use of planning agreements as set out in this Policy?
- (g) Are there any relevant circumstances that may operate to preclude Council from entering into the proposed planning agreement?

Notwithstanding the above, Council is not obliged to enter into a planning agreement with a developer.

### **2.3 Matters Council may consider**

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

- (a) Whether the planning agreement delivers a public purpose as defined by Section 7.4 of the Act.
- (b) Whether the proposed planning agreement contribution is needed and aligns with Council's corporate strategic documents, existing development contribution plans or other infrastructure delivery documents adopted by Council.
- (c) Whether the proposed development is consistent with any other policy adopted by Council relating to the provision of community infrastructure for planning proposals or proposed development that will involve a land value uplift.
- (d) Whether the proposed planning agreement contributions can be achieved via an alternate mechanism such as a condition of development consent.
- (e) The extent to which the proposed planning agreement contribution satisfies a community need and would secure benefits for the wider community.
- (f) Whether the proposed planning agreement meets the demands created by the development for new public infrastructure, amenities and services.
- (g) Whether rectification of an existing deficiency in the existing provision of public facilities in the City of Parramatta LGA will occur.
- (h) What impact the proposed planning agreement contributions will have on Council's asset management strategy, including the ongoing operational and maintenance costs of unplanned infrastructure being dedicated to Council.
- (i) Whether recurrent funding of public facilities is required or provided.
- (j) The extent to which the Council needs to monitor the planning impacts of development.
- (k) Whether the planning agreement contribution under the proposed planning agreement would provide compensation for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration.
- (l) Whether the planning agreement contribution under the proposed planning agreement would achieve the provision of affordable housing.

### **2.4 Planning agreement contributions Council will consider in a planning agreement**

The planning agreement contribution negotiated under a planning agreement could comprise one or more of the following (to Council):

- (a) a monetary contribution; and/or
- (b) delivery of infrastructure works free of cost, including any contribution towards ongoing maintenance of those works; and /or

- (c) dedication of land/affordable housing or the like free of cost;
- (d) or a combination of the above.

Any planning agreement contribution must be for a public purpose as defined by the Act, and meet the criteria nominated below:

- (a) Long lived infrastructure works that are identified in an existing development contributions plan, corporate strategic document or other infrastructure delivery document or policy adopted by the Council;
- (b) Dedication of land in keeping with Council's existing land reservation maps, an existing development contributions plan, corporate strategic instrument, or other infrastructure delivery document or policy adopted by the Council;
- (c) Affordable housing in keeping with Council's adopted Affordable Housing Policy;
- (d) Monetary contributions toward infrastructure delivery and/or land acquisition (including recoupment cost or recurrent expenditure), in line with criteria above;
- (e) Planning agreement contributions that meet the following criteria and are endorsed by Council:
  - (i) Will provide for a substantial material benefit to the community; and
  - (ii) Meet a need of the community that was not identified (or known) at the time the contributions plan or corporate strategic documents were written; and/or
  - (iii) Deliver infrastructure needs identified in relevant regional or district strategic plans, or similar metropolitan strategy documents applying to the City of Parramatta.

## **2.5 Value of the planning agreement**

The value of the planning agreement contributions to be delivered under a planning agreement must be consistent with the provisions of any relevant planning instrument (including draft) and development control plan.

Clause **2.11** describes how Council will value planning agreement contributions under a planning agreement.

### *2.5.1 Planning proposals and development in the CBD*

As at the date of this policy, Council anticipates that the local environmental plan for the City of Parramatta will contain provisions about community infrastructure needs arising from planning proposals and development applications in the CBD.

### *2.5.2 Satisfactory Arrangements*

In the absence of any draft or adopted planning instrument, Council will consider, as a matter of public interest, whether satisfactory arrangements have been or will be made for the provision of community infrastructure, given the likely increase in demand for services and infrastructure. This may involve consideration of land value uplift to determine an appropriate value for the planning agreement contributions.

### *2.5.3 Planning proposals and development outside the CBD*

For proposed development and planning proposals outside of the CBD, Council's primary position is that satisfactory arrangements for the provision of community infrastructure will be taken to have been made when the value of the planning agreement contributions is equivalent to 50% of the land value uplift.

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

- (a) whether any Special Infrastructure Contributions (as per Section 7.24 of the Act) are (or are to be) levied in connection with the proposed development or planning proposal as directed by the Minister;
- (b) where the applicant is willing to participate in an open book analysis process that enables the Council to consider other matters that affect project viability specifically as a result of the planning agreement; and
- (c) where applicable any requirement of Council's adopted Affordable Housing Policy to provide 10% of the uplift value as affordable housing units. This will be included in the overall 50% land value uplift requirement.
- (d) where applicable any delivery of infrastructure works free of cost, including any contribution towards ongoing maintenance of those works.

For the avoidance of doubt, Council will not consider any 7.11 or 7.12 monetary development contributions as part of Clause 2.5.3(a) above.

The documents to be provided by the developer for an open book analysis will be determined by Council in accordance with any internal procedure for undertaking the assessment to be made publicly available.

Any documents provided by a developer for an open book analysis will be treated as 'commercial in confidence.'

Where necessary an independent arbitrator should be jointly appointed by Council and the developer to resolve any disputes with regard to the open book analysis.

#### *2.5.4 Land Value and Land Value Uplift*

If this, or any other policy, requires consideration of land value uplift, the determination of the land value uplift will be based on either market evidence or hypothetical "before and after" valuation rationale. All land valuations are to be prepared by an independent registered valuer with at least 10 years' experience in valuing land in New South Wales (and who is acceptable to Council and the developer).

#### *2.5.5 Works in Kind and Material Public Benefits*

In the case of a planning agreement proposing to deliver works in kind or material public benefit solely in lieu of payment of a Section 7.11 or Section 7.12 development contribution (required under an existing development consent), where the works to be delivered are not identified in an existing development contributions plan or corporate strategic document, the value of the planning agreement contribution offered under the agreement should be significantly greater than the otherwise applicable Section 7.11 or 7.12 monetary development contribution (as indexed based on the likely timeframes for completion of the development).

### **2.6 Recurrent charges & maintenance costs**

Where a planning agreement proposes works or dedication of land and/or building assets, Council may require the developer to provide supporting documentation outlining the lifecycle costs to Council, including operation or ongoing service delivery, as well as likely maintenance and replacement costs. This information will assist Council in determining whether to accept a planning agreement offer.

All planning agreements that involve the provision of public infrastructure through works to be carried out by the Developer should include a reasonable contribution toward ongoing maintenance and replacement costs of the infrastructure. The developer may make monetary contributions towards ongoing maintenance and replacement costs or may offer to maintain infrastructure delivered for a certain period of time after handover.

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

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

Planning agreements may also require a developer to make contributions towards other recurrent costs of public facilities such as operational or service provision costs.

### **2.7 Pooling of monetary contributions**

Where a proposed planning agreement provides for a monetary contribution by the developer, the Council may, in accordance with s7.3 of the Act, pool money paid for different purposes under Division 6 of Part 4 of the Act (other than Subdivision 4) and apply that money progressively for different purposes.

Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

### **2.8 Application of Section 7.11 or Section 7.12 development contributions**

A planning agreement should not exclude the application of s7.11 or s7.12 of the Act to development to which the planning agreement relates except, in the case of clause 2.9, where planning agreement contributions are offered as works in kind or material public benefit with a value at least equivalent to or greater than the s7.11 or s 7.12 monetary development contributions that would otherwise be payable under an existing condition of development consent and an adopted development contribution plan.

In all other circumstances Council will only consider excluding the application of s7.11 or s7.12 of the Act where the public benefit to be delivered via the planning agreement contribution exceeds the public benefit to be delivered under the 7.11 or 7.12 development contribution.

A planning agreement cannot exclude the application of sections 7.11 or 7.12 to a particular development, unless the consent authority for the development or the Minister is a party to the planning agreement (section 7.4(3A) of the Act).

Where the application of sections 7.11 or 7.12 of the Act to development is not excluded by a planning agreement, the Council will generally not agree to benefits under the agreement being taken into consideration in determining a development contribution under section 7.11 or 7.12 or other “credits” being granted (see sections 7.11(5) and 7.11(6) of the Act).

Planning agreements entered into by the Council will state that the agreement does not exclude the application of section 7.24 unless the Minister or the appropriate development corporation approves the exclusion of the application of section 7.24 in relation to that planning agreement.

### **2.9 When will planning agreements proposed in lieu of payment of a Section 7.11 or Section 7.12 development contribution be permitted?**

Planning agreements to deliver works in kind or material public benefits in lieu of payment of Section 7.11 or Section 7.12 development contributions as required by an existing condition of development consent, will only be considered where the applicable 7.11/7.12 development contribution value exceeds \$500,000, or otherwise at the discretion of the Council.

### **2.10 Relationship to conditions of development consent**

Planning agreements should not be utilised where infrastructure delivery can be achieved via a condition of development consent in accordance with Section 4.17 of the Act. No value will be attributed under a planning agreement to works or land dedication that would otherwise be required by a condition of development consent relating to the land.

### **2.11 How will the Council value planning agreement contributions?**

Unless otherwise agreed, all benefits under a planning agreement will be dedicated at no cost to Council and free of all and any encumbrances, except any permitted encumbrances

as agreed by Council. The Council may attribute a “value” to benefits provided under a planning agreement, for the purposes of determining the “value” of the planning agreement contributions being offered by the developer.

Unless otherwise agreed in a particular case, planning agreement contributions will be valued as follows:

- (a) In the case of the dedication of land for a public purpose, the Council will attribute a value to the land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*. However, where any FSR entitlement is transferred from the land proposed to be dedicated to Council to the development component on the remaining parcel, a nominal value of one (1) dollar will be attributed to the land.

The value of land to be dedicated will be determined by an independent registered valuer with at least 10 years experience in valuing land in New South Wales.

- (b) In the case of works for a public purpose, the Council will attribute a value to the works in accordance with a cost estimate prepared by an independent registered quantity surveyor with at least 10 years experience.
- (c) In the case of dedication of dwelling units for affordable housing, the value to be attributed will be based on a market analysis of comparable sales in the previous 12 months, taking into account any other deliverables in connection with the transfer of the unit.
- (d) In the case of any other type of benefit, Council may, at its discretion, consult with the developer and apply an appropriate valuation methodology to determine the value to be attributed to those benefits.
- (e) As specified in clause **2.10** of this policy, in the event that a planning agreement proposes works and services that would otherwise be required as a condition of development consent, then those works and services will be deemed to have no value under the planning agreement.

All costs associated with the determination of values will be borne by the developer.

### **3 NEGOTIATING PROCEDURES AND PROBITY**

#### **3.1 *Timing of negotiation***

A proposed planning agreement should be discussed with Council officers before lodgement of the relevant application and an initial preliminary written offer should accompany the application on lodgement. The written offer can be finalised and provided to Council once negotiations about the terms of the planning agreement have been undertaken.

A draft planning agreement is intended to be publicly notified at the same time as the planning proposal to which it relates.

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

The planning agreement should be negotiated and documented before it is publicly notified as required by the Act or Regulation.

Further details on the negotiation process are outlined in clauses **3.9** and **3.10** of this Policy.

#### **3.2 *In what form shall a planning agreement offer be made?***

Any formal planning agreement offer must be made in writing by the developer and landowners (if the developer does not own the land) and should include in principle agreement to the terms set out in the Planning Agreement template provided in conjunction with this Policy.

Any potential variation/s to the template Planning Agreement should be identified in the planning agreement offer, accompanied by reasons for the variation. A template Letter of Offer is provided in conjunction with this Policy. The planning agreement offer should address each of the requirements under section 7.4 of the Act.

#### **3.3 *Delegation to negotiate and prepare a draft planning agreement or amendment to a planning agreement***

The VPA Officer will have delegation to negotiate a planning agreement or amendments to an existing planning agreement on behalf of the Council. That delegation will be granted in accordance with Council's standard delegation procedures.

Councillors will not be involved in the face to face negotiation of the planning agreement with a developer during the period of the negotiation, but will, in their role as Councillors, ultimately endorse and approve the planning agreement by resolution to exhibit and execute the agreement.

Subject to compliance with clause **3.4** below, the VPA Officer may negotiate a planning agreement prior to and after, public exhibition of the draft planning agreement or draft amendment to a planning agreement.

#### **3.4 *Council to endorse planning agreements***

Once the terms of the planning agreement have been negotiated by the VPA Officer, Council must endorse, in principle, a draft planning agreement or amendment to an existing planning agreement prior to its public exhibition.

The VPA Officer will also be involved in the finalisation of the draft planning agreement or amendment to an existing planning agreement following its public exhibition.

Prior to finalisation and execution of a planning agreement or amendment to an existing planning agreement, a further resolution of Council is required to address any submissions



and obtain endorsement of the final planning agreement or final amendment to an existing planning agreement for the purpose of execution.

### **3.5 When will the draft Planning Agreement be exhibited?**

Council prefers that a planning agreement is discussed before lodgement of the relevant application and that an initial offer accompanies the application on lodgement. Once the terms of the planning agreement are negotiated, a formal written offer can be finalised.

A draft planning agreement offer (or if the applicant wishes a draft planning agreement) will need to be endorsed by Council for public exhibition purposes as follows:

- (a) In the case of a planning proposal application: before the planning proposal is sent to the Department for gateway determination, with the intention of exhibiting the draft agreement with the planning proposal;
- (b) In the case of a development application (or modification of consent), before the Local Planning Panel or Sydney Planning Panel considers the development application (or modification of consent), with the intention of exhibiting the draft agreement as soon as practicable after lodgement of the development (or modification) application.

A draft planning agreement must be publicly exhibited in accordance with the Act and Regulation.

### **3.6 Re-negotiation of a planning agreement following a gateway determination, council meeting, or public exhibition?**

A planning agreement that is in the process of being negotiated and has not yet been executed by the parties may be further negotiated as agreed between Council and the developer. Further negotiations may, for example, be required in response to public submissions or where the assessment results in a change in infrastructure needs compared to that initially negotiated.

Dependent upon the nature of changes made to a draft planning agreement following public exhibition, re-notification may be required in accordance with clause 4.2 of this Policy.

### **3.7 Who will assess the planning agreement offer?**

The CEO will nominate the VPA Officer to be the representative of the Council in all negotiations regarding the key commercial terms of any proposed planning agreement.

Planning agreement offers will be assessed by a VPA Officer. An independent third party may be engaged to participate in the negotiation and assessment of a planning agreement offer (see clause 3.9 of this Policy).

Face to face discussions with developers will be held with at least two Council officers attending. Minutes of any meeting with developer regarding the planning agreement will be prepared and circulated by the VPA Officer.

Councillors will not be involved in any direct face to face negotiations with a developer during the period of the negotiation, but will, in their role as Councillors, ultimately endorse and approve the planning agreement by resolution to exhibit and execute the agreement.

If the VPA Officer involved in the negotiation of a planning agreement has had involvement in the assessment of the development application or planning proposal, another VPA Officer must conduct a peer review of the proposed planning agreement arrangements prior to the public exhibition of the planning agreement. A copy of that peer review document must be provided to Council's Director Strategic Outcomes and Development for consideration prior to public exhibition of the planning agreement.

Council will ensure the VPA Officer does not have any conflict of interest, pecuniary or otherwise, within the meaning of Council's Code of Conduct in respect of the subject matter of the planning agreement or the development application or planning proposal to which it relates.

If the VPA Officer considers that she or he may have such a conflict, that person must immediately advise the Council and a different VPA Officer, or if necessary an independent third party, must be appointed.

If any person reporting to the VPA Officer is involved with the draft planning agreement, that person shall be bound by the same provisions of this Policy in respect of interaction with Council officers assessing the development application or planning proposal and conflicts of interest.

### **3.8 Input from other Council officers**

The VPA Officer should receive input from the relevant Council officers in the following circumstances:

- (a) from Council's Executive Team prior to acceptance of a formal VPA Offer;
- (b) from Council's development contribution planners if the draft planning agreement proposes to offset any contributions under s7.11 or 7.12 of the Act, or to exclude the application of those sections to the development to which the planning agreement will relate, or to dedicate land or provide works that are otherwise set out in a development contributions plan;
- (c) from relevant officers with responsibility for the types of work proposed in a planning agreement (such as roads or open space) regarding the need for such works and/or the specifications for such works; and
- (d) from Council's Asset Strategy & Property Management team where a planning agreement proposes the dedication of any land and the creation of new assets.

### **3.9 Involvement of independent third parties in the negotiation and assessment process**

Council may appoint an independent person to facilitate or otherwise participate in the negotiation or assessment of a planning agreement, or aspects of it, such as where:

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

The cost of the independent third party or parties will be borne by the developer.

### **3.10 Key steps in planning agreement preparation process**

Council's negotiation system for planning agreements aims to be transparent, consistent, efficient, fair, and accountable.

The system seeks to ensure that the negotiation of planning agreements runs in parallel with planning proposal applications or development applications (including modification of consent).

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

Council prefers that a developer make an offer to enter into a planning agreement at the same time as lodgement of a planning proposal or development application (including modification of consent).

#### ***Step 1 – Initiation***

- (a) Prior to lodgement of a development application (including modification of consent) or planning proposal application either a developer or Council might commence the discussions about whether a planning agreement is appropriate in connection with any particular development application or planning proposal.
- (b) Council staff and the developer will decide whether to negotiate a planning agreement in accordance with this Policy. Council staff may also determine whether it is appropriate not to proceed with a planning agreement.

#### ***Step 2 – Lodgement of Development Application or Planning Proposal***

- (c) An initial planning agreement offer should be made by the developer in conjunction with the lodgement of a planning proposal or development application (including modification of consent) with Council.
- (d) Council and the developer are to nominate the persons that will represent them in the negotiations. Council may nominate a third party at its discretion.
- (e) If Step 1 did not occur, or the developer did not make an initial planning agreement offer at lodgement of the planning proposal or development application (including modification of consent), Council may initiate discussions about a potential planning agreement.

#### ***Step 3 – Negotiation of commercial terms***

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

#### ***Step 4 – Formal written offer***

- (k) Once the key commercial terms of the planning agreement are agreed the developer will provide a formal written offer confirming the agreed commercial terms including agreement to Council's standard template planning agreement provisions (provided in conjunction with this Policy), or any agreed variations to the standard template planning agreement. A template letter of offer to enter into a planning agreement is provided in conjunction with this Policy.

- (l) The developer may submit a draft planning agreement with the letter of offer based on Council's standard template planning agreement (provided in conjunction with this Policy).

#### **Step 5 – Report to Council**

- (m) The outcomes of the negotiation and assessment of the formal written VPA offer are to be reported to Council seeking a resolution that a draft planning agreement be prepared for public exhibition purposes. It is noted that Council may not accept the planning agreement offer based on negotiations between the VPA Officer and the developer. In this circumstance further negotiations between the developer and the VPA Officer may need to be undertaken to satisfy Council.
- (n) In the case of a planning agreement offer made in conjunction with a planning proposal, the report to Council will ordinarily occur concurrently with a report seeking that the planning proposal be referred to the Department of Planning & Environment for Gateway Determination.

#### **Step 6 – Preparation of draft planning agreement**

- (o) Once the Council has resolved to prepare a planning agreement for public exhibition, the VPA Officer will (under delegation) commence preparation of the formal legal document based on Council's standard template planning agreement (provided in conjunction with this Policy).
- (p) There may be further negotiation between the parties in respect of the detailed terms of the planning agreement. These matters should have previously been identified in Step 4.
- (q) All parties are to agree to a final draft planning agreement and the accompanying explanatory note for public exhibition purposes.

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

#### **Step 7 – Public exhibition**

- (r) Council will publicly exhibit and notify the development application or planning proposal and draft planning agreement in accordance with the Act, this Policy and Council's Notification Policy.
- (s) Where possible, public exhibition of the draft planning agreement should occur concurrently with public exhibition of the associated planning proposal or development application (including modification of consent).
- (t) Council will consider any submission made about a planning agreement before finalising the agreement for further report to Council.
- (u) The VPA Officer may negotiate further changes to the draft planning agreement having regard to any matters raised following public notification and exhibition.
- (v) If changes are made to a planning agreement, Council will consider if those changes warrant re-exhibition and repeat of any of the steps above.

#### **Step 8 – Further report to Council**

- (w) Following the completion of the public exhibition period a further report will be put to Council detailing the outcomes of the public exhibition, addressing any submissions, and where necessary recommending further changes to the draft planning agreement as a result of the exhibition. The report will include recommendations

about how to proceed with the planning agreement, (i.e. seek execution of the agreement, amend the agreement or not proceed with the agreement).

It is noted that Council may not accept the recommendations of the VPA Officer. In this circumstance further negotiations between the developer and the VPA Officer may need to be undertaken to satisfy Council.

- (x) The report referred to in (w) should be put to Council before the development application is considered by the Local Planning Panel or Sydney Planning Panel.

### **Step 9 – Execution of Planning Agreement**

- (y) Should Council endorse a planning agreement for execution, the planning agreement will be executed by both parties.
- (z) A planning agreement must be executed before Council will finalise any instrument change associated with an accompanying planning proposal application. If the Developer refuses to execute a planning agreement offered in connection with a planning proposal, the Council will ask the Minister not to proceed with the relevant instrument change under section 3.35(4) of the Act.
- (aa) Where a planning agreement is made in conjunction with a development application (including modification of consent), the development consent will be subject to conditions requiring the planning agreement to be complied with. If the agreement is not executed prior to development consent being granted, a condition will be imposed requiring execution of the planning agreement in accordance with the offer made and subsequent registration of the agreement. Conditions requiring the execution and registration of a planning agreement may be deferred commencement conditions that must be satisfied before the consent becomes operational.

Indicative flow charts that show the steps in the planning agreement process are provided at **Appendix B**.

### **3.11 Separation of Council's commercial and planning assessment roles**

If Council has an interest in the subject matter of a planning agreement as a landowner, developer or financier, the CEO may choose to engage the services of an independent consultant to ensure that the negotiations are subject to a fair and transparent assessment process. See also clauses **3.9** and **3.12** of this Policy).

### **3.12 Probity**

Public probity is important to City of Parramatta Council and it will ensure that the negotiation of any planning agreements is fair, transparent and is directed at achieving planning agreement contributions in an appropriate manner free of corruption. In this regard, Council will:

- (a) comply at all times with the requirements of the Act and Regulation in respect of planning agreements, and in particular the requirements for public notification of planning agreements;
- (b) provide a copy of this Policy to any person who seeks to enter into a planning agreement with Council;
- (c) publish this Policy on Council's website and promote the general awareness of this Policy;
- (d) comply with public notification requirements in the Act;
- (e) comply with the Council's Code of Conduct;

- (f) inform any applicant as required about Council values, Code of Conduct and business ethics – specifically, about ethical behaviour appropriate to business dealings.
- (g) ensure that Council officers and Councillors understand the circumstances in which planning agreements are appropriate;
- (h) ensure that Councillors and Council staff understand their particular role and responsibility, some of which carry the potential for conflicts of interest;
- (i) ensure that where a VPA Officer is involved in the negotiation of a planning agreement and is also involved in the assessment of the associated development application or planning proposal, that another VPA Officer must conduct a peer review of the proposed planning agreement arrangements prior to the public exhibition of the planning agreement.
- (j) ensure that all meetings with the developer in respect of the planning agreement are properly separated and documented (including meeting minutes) and that the VPA Officer attends the meeting with at least one other Council officer;
- (k) ensure that where Council has a stake in development the subject of a planning agreement, it will take appropriate steps to ensure that there is no conflict of interest including taking appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development; including appointing independent person(s) and/or probity advisor.
- (l) require independent negotiation and assessment where appropriate to ensure probity and avoid conflicts of interest;
- (m) ensure that modifications to approved development should be subject to the same scrutiny as the original development application.
- (n) ensure that Councillors are not involved in any direct face to face negotiations with a developer during the period of the negotiation, but recognise that in their role as Councillors that they will ultimately endorse and approve the planning agreement by resolution to exhibit and execute the agreement.

## **4 NOTIFICATION AND PROCEDURE**

### **4.1 *Public notification of planning agreements, amendments or revocation***

A planning agreement, amendment or revocation must be publicly notified and available for public inspection in accordance with the Act (currently a minimum period of 28 days). The Council may decide to notify a planning agreement for a longer period at its discretion.

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

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

The advertising costs relating to public exhibition of a planning agreement will be borne by the developer. Fees will be charged in line with Council's Fees and Charges Schedule.

### **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 the agreement has been previously publicly notified and inspected. Such a change could arise as a consequence of public submissions made about the agreement or the application, or formal consideration of them by the Council.

### **4.3 *Public comment on planning agreements***

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

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

## **5. IMPLEMENTATION AND CONDITIONS**

### **5.1 Preparation of the planning agreement**

Unless otherwise agreed by the parties in a particular case, planning agreements will be prepared by Council based on a formal offer made by a developer.

The planning agreement will be prepared in accordance with the requirements of the Act, the Regulation, this Policy and Council's template planning agreement provided in conjunction with this Policy. The planning agreement will include an explanatory note in accordance with the template provided in conjunction with this Policy.

### **5.2 Parties to the planning agreement**

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

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

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

### **5.3 When is a planning agreement required to be executed?**

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

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

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

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

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

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

The Council will usually require a planning agreement in connection with a planning proposal to be executed before the Council submits the relevant draft planning instrument change to the Minister to be made, or before Council makes the instrument change under delegation. If the planning agreement is not executed at an appropriate time, the Council may request the Minister not to proceed with the instrument change, in accordance with s3.35 of the Act.



#### **5.4 When will planning obligations arise?**

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

- (a) In the case of a monetary contribution
  - (i) 75% of the monetary contribution prior to the issue of a construction certificate; and
  - (ii) 25% of the monetary contribution prior to the issue of any occupation certificate (interim or final) or prior to the registration of a Strata Plan, whichever is earlier (so the planning agreement can be removed from title prior to Strata Plan registration).

Council will accept the provision of a bank guarantee in lieu of the first payment due (paragraph (i) above). In those circumstances, full payment of the monetary contribution will be due prior to the issue of any occupation certificate (interim or final).

- (b) In the case of works, prior to the issue of the first occupation certificate for development on the land (including any interim occupation certificate). Council will require any works on land to be dedicated (for example fit out of an affordable housing unit or embellishment of a public reserve) to be completed prior to dedication.
- (c) In the case of land dedication for affordable housing, within 10 business days of the registration of the relevant subdivision plan creating the lot to be dedicated, or the issue of an occupation certificate for the land to be dedicated, whichever occurs later:
- (d) In the case of other land dedication, prior to occupation of the development or the issue of an occupation certificate for the development. This timing may be varied depending on how the development will be staged and the location of the land to be dedicated. Council will request this information from Developers so that it can be properly informed when negotiating the likely timing for the dedication of the land.
- (e) Dedication of public reserves or public roads can be made on registration of a subdivision plan creating the lot to be dedicated in accordance with the relevant provisions of the *Local Government Act 1993* or the *Roads Act 1993*.
- (f) Council in agreement with the developer may choose to add a final date or maximum time period in which the planning agreement contributions are to be delivered, for example, within 5 years of execution of the agreement.

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

#### **5.5 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.

#### **5.6 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.

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

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

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

#### **5.8 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.

**5.9 Provision of security under a planning agreement**

The Council will require a planning agreement to make provision for security to cover the developer's obligations under the agreement.

The form of security for obligations to deliver works or make monetary contributions 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.

In respect of planning agreement contributions in the form of land, Council may require a planning agreement to include provisions allowing Council to acquire any land to be dedicated for one Australian dollar if the developer defaults.

Council may also require, in appropriate cases, the creation of a charge over land, and may require the landowner to agree not to object to Council lodging caveats on the title of all or any of the land the subject of the planning agreement. In particular, Council will generally require a planning agreement to include provisions acknowledging Council has a caveatable interest over:

- (a) the whole of the land until the planning agreement is registered; and
- (b) any land to be dedicated to Council, once the relevant portion of land has been created.

Any amount to be secured by a Bank Guarantee or bond will be adjusted on each anniversary date in accordance with increases in the consumer price. The formula for adjustment of security amounts will be consistent with the indexation of planning agreement contributions specified in the planning agreement (see clause 5.11 of this Policy).

**5.10 Timing of security payment**

- (a) Council will require any security (such as bank guarantees) for planning agreement contributions that do not involve monetary payment to be provided prior to the issue of a construction certificate, or at such other appropriate times, depending on the nature and timing of the planning agreement contributions.
- (b) Where security is required under a planning agreement for a monetary contribution only, the security may be provided as a bank guarantee for 75% of the monetary contribution prior to the issue of a construction certificate.

The developer may pay the monetary contribution instead of providing a bank guarantee for a particular stage in accordance with clause 5.4 of this Policy.

**5.11 Indexation of monetary contributions and security**

Monetary contributions included with a planning agreement are to be subject to indexation to reflect increases in the consumer price index between the execution of the agreement and timing of payment/s. Indexation shall be undertaken in accordance with the following formula:

$$\begin{array}{r}
 \text{\$insert amount of} \\
 \text{monetary contribution}
 \end{array}
 \times
 \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this agreement}}$$

CPI is the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

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

#### **5.12 GST and planning agreements**

All planning agreements are to be consistent with the A New Tax System (Goods and Services Tax) Act and Regulation.

Monetary contributions provided under a planning agreement are exclusive of GST. If GST is or becomes payable on any contribution under a planning agreement, the developer will be required to pay the GST or pay an amount to Council equivalent to the GST. The template planning agreement contains a provision to this effect.

#### **5.13 Registration of planning agreements to title**

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

The Council will require a planning agreement to contain a provision requiring the developer to register the agreement under the Real Property Act 1900 at the developer's expense in accordance with section 7.6 of the Environmental Planning and Assessment Act 1979.

The developer is to provide evidence of the registration of the planning agreement to Council through provision of each relevant property title within the time frames outlined in the planning agreement.

If the planning agreement is not registered prior to the grant of development consent, Council will require registration of the planning agreement as a condition of development consent.

The registration of the planning agreement against the title to land can be removed once all of the planning obligations have been delivered.

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

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

#### **5.14 Dispute resolution**

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

#### **5.15 Council's costs of negotiating, entering into, monitoring and enforcing a planning agreement**

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, advertising and entering into the agreement (including reasonable legal costs in obtaining advice in

connection with the planning agreement) as well as administering and enforcing the agreement.

Council may require the planning agreement to make provision for a contribution by the developer towards the ongoing administration of the agreement (see clause **5.20** of this Policy).

This clause also applies to any amendment to a planning agreement, or any novation deed.

#### **5.16 Costs associated with delivery of the planning obligations**

All costs associated with the delivery of the planning obligations under the planning agreement are to be borne by the developer.

#### **5.17 Detailed design plans and specifications**

The Council will require a planning agreement to make provision requiring detailed design plans and or specifications to be provided to Council for approval prior to the commencement of any works to be delivered under a planning agreement.

#### **5.18 Inspections**

The Council will require a planning agreement to make provision for the inclusion of mandatory inspections where works are to be delivered and/or land is to be dedicated under a planning agreement, and in any other circumstance it considers appropriate.

#### **5.19 Defects liability period**

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

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

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

#### **5.20 Administrative fees**

In accordance with this Policy and/or Council's Fees & Charges Schedule, an administration fee will be levied by Council for the following, where relevant:

- (a) Participation in any design processes.
- (b) Approval of detailed design plans and specifications.
- (c) Inspections and reporting, including on defects in works.
- (d) Issuing certificates of practical completion.
- (e) Contract administration.
- (f) Enforcing a planning agreement, including costs associated with calling on bank guarantees or letters of demand.
- (g) Registration of planning agreements.
- (h) Registration and withdrawal of caveats.
- (i) Registration and variation of easements or covenants or other instruments to be registered against the title to land.
- (j) Release and discharge of planning agreements, including costs of removing a planning agreement from title.

- (k) Exhibiting the planning agreement or any variation of the planning agreement.

**5.21 Notations on certificates under S10.7(5) of the Act**

The Council will generally require a planning agreement to contain an acknowledgment by the developer that the Council may, at its absolute discretion, make a notation under s10.7(5) of the Act about a planning agreement on any certificate issued under s10.7(2) of the Act relating to the land the subject of the agreement or any other land.

**5.22 Amendment of planning agreements**

A planning agreement may only be amended in accordance with the Act and the Regulation, which require any amendment to be in writing and publicly notified.

The costs associated with amending a planning agreement will be borne by the Developer.

**5.23 Classification of Land**

Where land or housing is dedicated or transferred to Council, Council shall seek the direction of the Asset Strategy & Property Management Team relating to the classification of that land or housing under Chapter 6, Part 2 of the *Local Government Act 1993*. Council shall resolve to classify the land or housing or the like accordingly at the time council endorses the execution of the planning agreement.

**5.24 Access to planning agreements**

Council will comply with the requirements of the Act and Regulation with respect to providing public access to executed planning agreements, explanatory notes, and a planning agreements register.

Council officers will report the status of Planning Agreements to Council at least 3 times per year in March, June and September.

**5.25 Accountability**

Monetary contributions collected and/or infrastructure works delivered under a planning agreement shall be accounted for in Council's financial reports and/or asset registers.

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

**Monitoring & Review of Policy**

This Policy shall be reviewed at minimum every five years or as otherwise required.

## 6. TERMS AND DEFINITIONS USED IN THIS POLICY

In this Policy, the following definitions apply:

**7.11 or 7.12 development contributions** has the same meaning given in S7.11 and/or 7.12 of the Act.

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

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

**CBD** means that part of the City of Parramatta Local Government Area shown on the map at **Appendix A**.

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

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

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

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

**Department** means the Department of Planning and Environment.

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

**development application** has the same meaning as in the Act.

**development consent** has the same meaning as in the Act.

**development contribution plans** means the contributions plan referred to in section 7.18 of the Act.

**explanatory note** means a written statement that provides details of the objectives, nature, effect and merits of a planning agreement, or an amendment to or revocation of a planning agreement, as required under clause 25E of the Regulation.

**floor space ratio (FSR)** has the meaning given in the *Parramatta Local Environmental Plan 2011*, or any replacement environmental planning instrument; or any other Local Environmental Plan or other planning instrument applicable within the City of Parramatta local government area and applies to the land the subject of the planning agreement.

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

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

**land value uplift** means an increase in residual land value that will arise from a proposed instrument change or the grant of a development consent that allows development to exceed

current development standards under the relevant local environmental plan or other planning instrument.

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

**planning agreement 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 to be used for or applied towards a public purpose.

**planning benefit** means a planning agreement 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.

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

**planning proposal** has the meaning given in section 3.33 of the Act.

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

**public** includes a section of the public.

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

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

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

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

**special Infrastructure contribution** has the same meaning given in section 7.24 of the Act

**staged development** refers to a development that has been approved by a consent authority to be delivered in stages.

**staging plan** means a plan setting out the staged timing of planning obligations to be aligned to relevant stages of an approved development.

**VPA Officer** means a person appointed by the CEO, and delegated the function of negotiating and considering a proposed planning agreement on behalf of Council.



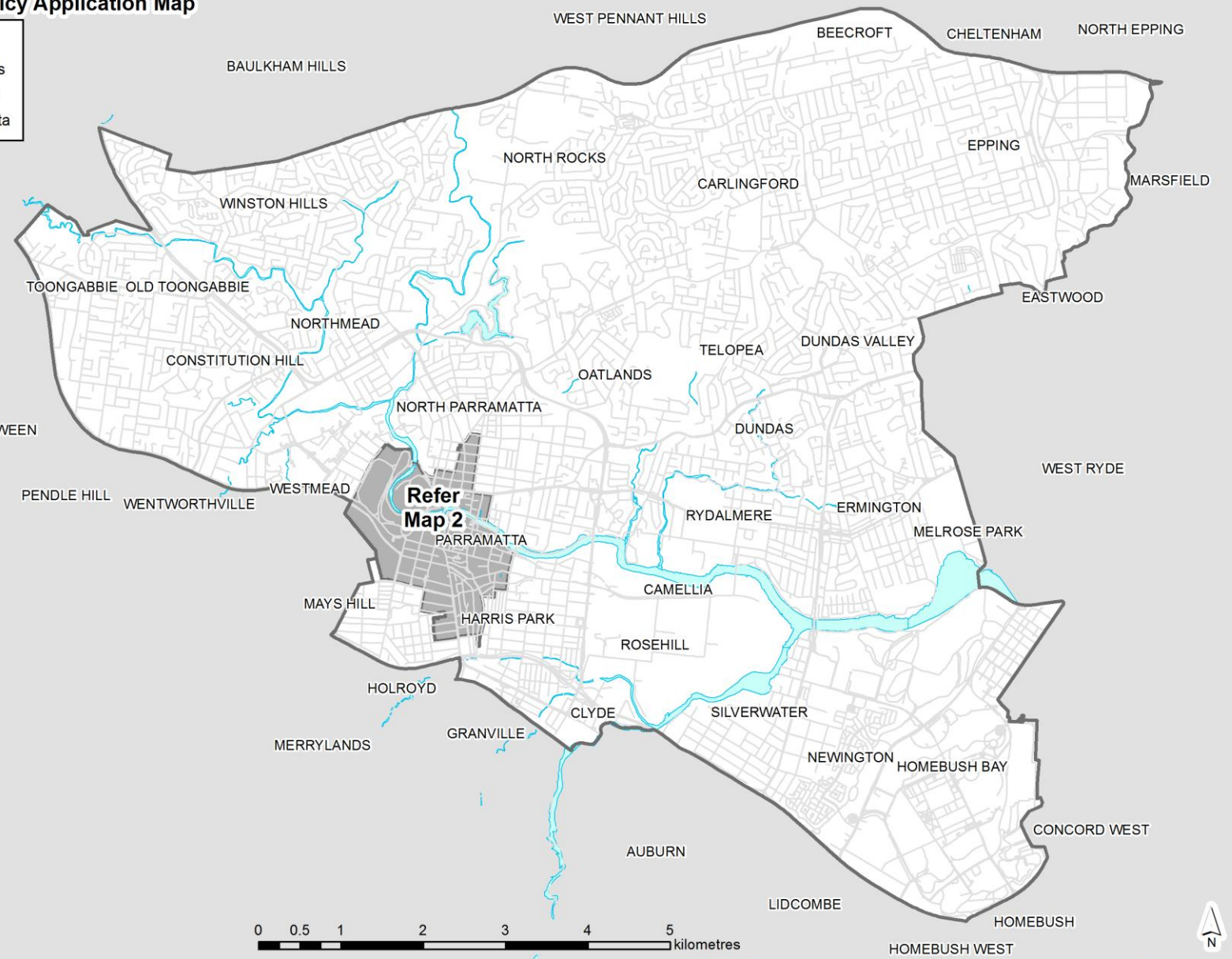
**APPENDIX A**

**Application Map and Parramatta CBD Map**

# Map 1 - VPA Policy Application Map

**Legend**

- Rivers and Lakes
- Parramatta CBD
- City of Parramatta

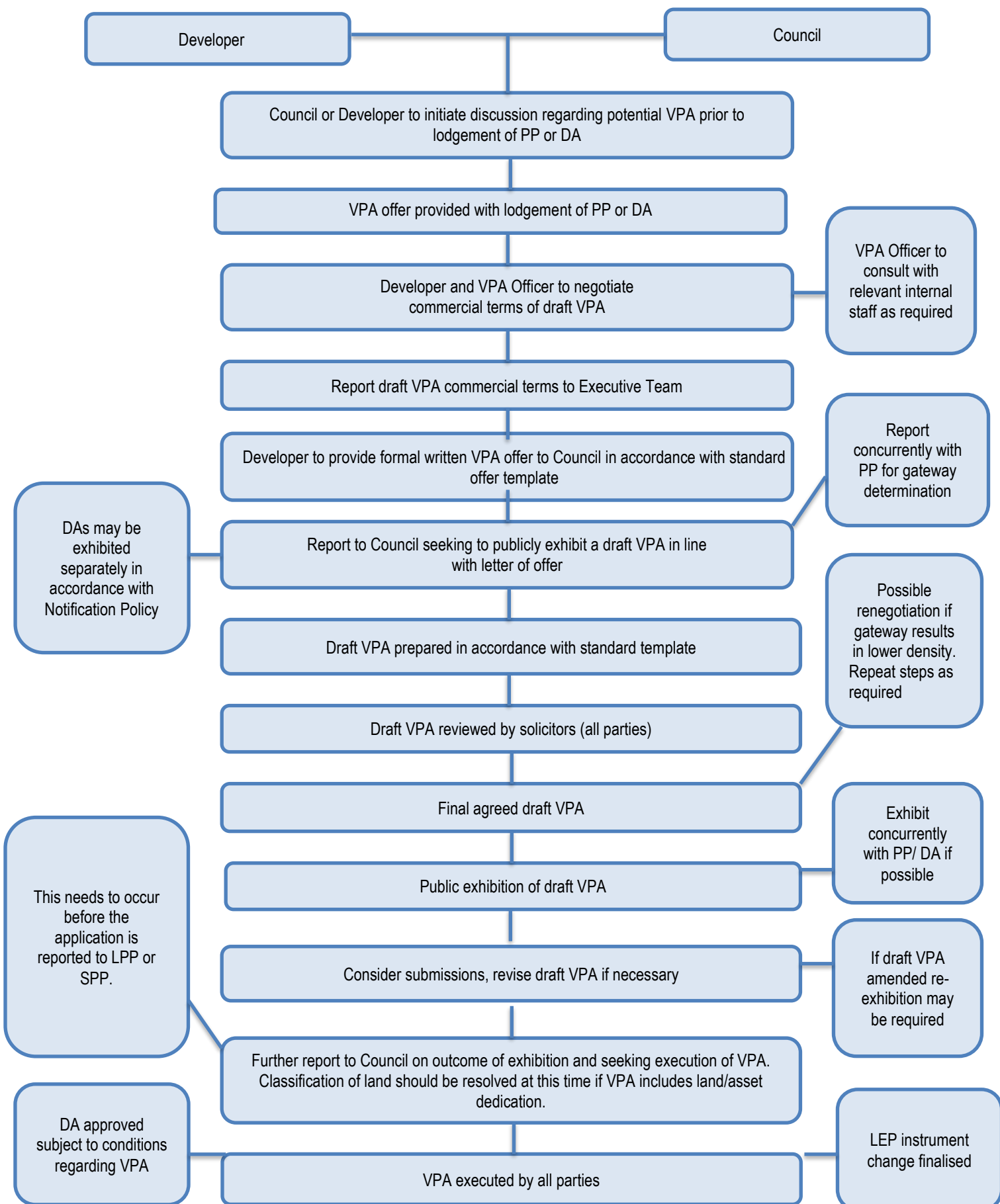


**Map 2 - VPA Policy Application Map - Parramatta CBD**



**APPENDIX B**

**Flow Chart**



Developer

Council

Council or Developer to initiate discussion regarding potential VPA prior to lodgement of PP or DA

VPA offer provided with lodgement of PP or DA

Developer and VPA Officer to negotiate commercial terms of draft VPA

VPA Officer to consult with relevant internal staff as required

Report draft VPA commercial terms to Executive Team

Developer to provide formal written VPA offer to Council in accordance with standard offer template

Report concurrently with PP for gateway determination

DA may be exhibited separately in accordance with Notification Policy

Report to Council seeking to publicly exhibit a draft VPA in line with letter of offer

Possible renegotiation if gateway results in lower density. Repeat steps as required

Draft VPA prepared in accordance with standard template

Draft VPA reviewed by solicitors (all parties)

Final agreed draft VPA

Exhibit concurrently with PP/ DA if possible

This needs to occur before the application is reported to LPP or SPP.

Public exhibition of draft VPA

Consider submissions, revise draft VPA if necessary

If draft VPA amended re-exhibition may be required

Further report to Council on outcome of exhibition and seeking execution of VPA. Classification of land should be resolved at this time if VPA includes land/asset dedication.

DA approved subject to conditions regarding VPA

VPA executed by all parties

LEP instrument change finalised