

City of Newcastle  
**Procedure**

# **Planning Agreement Procedure July 2021**

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## 1 Introduction

- 1.1 City of Newcastle's (CN's) approach to Planning agreements aims to be efficient, transparent and accountable. CN will seek to ensure that negotiations of Planning agreements run in parallel with applications for Instrument changes, development applications and complying development certificates so as not to unduly delay ordinary planning processes.
- 1.2 This procedure is intended to align with the objectives and principles of CN's Planning Agreement Policy and guidance provided by Department of Planning, Infrastructure and Environment (DPIE) in *Planning Agreements Practice Note – 2021*.

## 2 Timing for preparation of a Planning agreement

- 2.1 A draft Planning agreement should be finalised by CN and the Developer before a related Development application or Planning proposal is determined so that it may be accompanied by the draft agreement.
- 2.2 The following steps guide the process for entering into a Planning agreement:
  - 1) Prior to the lodgement of the relevant application, the Developer must indicate to CN their intention to accompany the Application with a draft Planning agreement.
  - 2) CN will advise the Developer if it agrees, in principle, to enter into a draft Planning agreement with the Developer and issue an invoice for the relevant fee as prescribed in CN's adopted fees and charges.
  - 3) The Developer will provide in writing to CN the key terms of its offer addressing (at a minimum) the mandatory requirements set out in Section 7.4 of the Act.
  - 4) CN (including the nominated project manager) will review the above information and once in principle agreement is reached, the Developer will be asked to prepare a draft Planning agreement consistent with the aims and objectives of CN's Planning Agreement Policy, this procedure and the key terms agreed upon in Step 3.
  - 5) The draft Planning agreement will be reviewed by CN's Legal Unit and reported to the elected Council seeking a resolution to exhibit the draft Planning agreement and explanatory note. CN will issue relevant fee/s as prescribed in Council's adopted fees and charges.
  - 6) The Developer can then lodge the relevant Development application or proposed Environmental Planning Instrument change to CN.
- 2.3 The entire procedure for considering, exhibiting and entering into a Planning agreement is illustrated in the flow chart at **Appendix 1**.

## 3 Involvement of independent third parties in the Planning agreement process

- 3.1 CN may appoint an independent person to facilitate or otherwise participate in the preparation of a Planning agreement, or aspects of it, such as where:
  - (a) an independent assessment of a proposed Instrument change, Development application or complying development certificate is necessary or desirable;
  - (b) factual information requires validation in the course of discussions;

- (c) sensitive financial or other information must be verified or established in the course of discussions;
- (d) facilitation of complex discussions are required in relation to large projects or where numerous parties or stakeholders are involved, or;
- (e) dispute resolution is required under a Planning agreement.

3.2 The cost of the independent person will be borne by the Developer.

#### **4 Council's cost of preparing, entering into, monitoring and enforcing a Planning agreement**

- 4.1 CN will require a Planning agreement to make provision for payment by the Developer of CN's costs and incidental to:
- a) preparing and entering into the Planning agreement
  - b) enforcing and monitoring the Planning agreement.
- 4.2 The amount to be paid by the Developer will be determined depending on the circumstances of each case.

#### **5 Entering into a Planning agreement**

- 5.1 CN will require a Planning agreement to be entered into as a condition of any development consent to which the Planning agreement relates.
- 5.2 Where a Planning agreement relates to an Environmental Planning Instrument change, the Planning agreement will need to be entered into prior to the making of a local environmental plan under Division 3.4 of the Act.
- 5.3 A Planning agreement is entered into when it is signed by the parties to the agreement.
- 5.4 A Planning agreement can be entered into at any time after the Planning agreement is publicly notified in accordance with the Act and Regulation.

#### **6 Provision of security under a Planning agreement**

- 6.1 CN will require a Planning agreement to make provision for security to cover the Developer's obligations under the Planning agreement. The form of security will be an unconditional bank guarantee from an Australian Bank in favour of CN to the full value of the Developer's obligations under the Planning agreement and on terms acceptable to CN.

#### **7 Implementation Agreements**

- 7.1 CN may require that before development the subject of the Planning agreement can commence, the Parties are to enter into an implementation agreement that provides for matters such as:
- a) nomination of a CN project manager to oversee implementation of the Planning agreement;
  - b) the timetable for provision of planning obligations under the Planning agreement;
  - c) the design, technical specification, and standard of work required by the Planning agreement to be undertaken by the Developer;
  - d) the manner in which work is to be dedicated to CN;

- e) the manner in which a material public benefit is to be made available for its public purpose in accordance with the Planning agreement;
  - f) the management or maintenance of land or works following dedication to CN.
- 7.2 There may be some circumstances where the Parties are not able to resolve all of these matters at the time the Planning agreement is entered into, particularly if the Planning agreement accompanies an application for an Environmental Planning Instrument change. If this is the case, CN may require the Planning agreement to be contingent upon CN and the Developer(s) entering into an implementation agreement, on terms satisfactory to CN.

## **8 Recurrent charges**

- 8.1 Planning agreements may require a developer to make contributions towards the recurrent costs of public facilities. Details regarding recurrent charges will need to be finalised and documented within the draft Planning agreement.
- 8.2 Where the public facility or public benefit is intended to serve the wider community, the Planning agreement may require the Developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility.

## **9 Pooling of development contributions**

- 9.1 Where a proposed Planning agreement provides for a monetary contribution by the Developer, CN may include a provision permitting money paid under the Planning agreement to be pooled (combined) with money paid under other Planning agreements and applied progressively for the different purposes under those Planning agreements. Pooling may be appropriate to allow public benefits to be provided in a fair, equitable and timely way.

## **10 Notification on certificates**

- 10.1 CN will require a Planning agreement to contain an acknowledgement by the Developer that CN will make a notation under Section 10.7(5) of the Act relating to the land that is the subject of the Planning agreement or any other land associated with the Planning agreement.

## **11 Registration of Planning agreements**

- 11.1 CN may require a Planning agreement to contain a provision requiring the Developer to agree to registration of the Planning agreement pursuant to Section 7.6 of the Act if the requirements of that section are satisfied.

## **12 Dispute resolution**

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

## **13 Credits and Refunds**

- 13.1 CN will not agree to a Planning agreement providing for the surplus value under a Planning agreement being refunded to the Developer or offset against development contributions required to be made by the Developer in respect of other development in Newcastle Local Government Area (LGA).

## **14 Modification and discharge of the Developer's obligations**

14.1 CN will only agree to a provision in a Planning agreement permitting the Developer's obligation under the Planning agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- a) the Developer's obligations have been fully carried out in accordance with the Planning agreement;
- b) the Developer has assigned the Developer's interest under the Planning agreement in accordance with its terms and the assignee has become bound to CN to perform the Developer's obligations under the Planning agreement;
- c) the development consent or complying development certificate to which the Planning agreement relates has lapsed;
- d) the performance of the Planning agreement has been frustrated by an event beyond the control of the parties;
- e) CN and the Developer otherwise agree to the modification for discharge of the Planning agreement.

14.2 Such a provision will require the modification or revocation of the Planning agreement in accordance with the legislation.

## **15 Assignment and dealings by the Developer**

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

- a) CN has given its consent to the proposed assignment or dealing;
- b) the Developer has secured all necessary documents (in favour of CN) from all future persons agreeing to be bound by the Planning agreement as if they were a party to the original Planning agreement, and
- c) the Developer is not in breach of the Planning agreement.

## **16 Dedication of works**

16.1 CN will not accept the dedication of public works carried out under a Planning agreement unless the Developer furnishes to Council a certificate to the effect that the work has been carried out and completed in accordance with the Planning agreement and any applicable development consents (which may, at CN's discretion, be a final occupation certificate, compliance certificate or a subdivision certificate) and, following the issue of such a certificate to CN, the work is also certified as complete by CN.

16.2 CN will require the Planning agreement to provide for a minimum of 12 months maintenance and defects liability period, during which any defects must be rectified, and infrastructure maintained at the Developer's expense.

## **17 Management of land or works after dedication**

17.1 If a Planning agreement provides for the Developer, at the Developers cost, to manage or maintain land or works that have been dedicated to CN, parties may be required to enter into a separate implementation agreement in that regard.

- 17.2 The failure of parties to reach agreement in relation to management and maintenance of the land or works are to be dealt with under the dispute resolution provisions of the Planning agreement.
- 17.3 Where obligations established under a Planning agreement extend beyond the dedication of works, registration on land title may be required to inform people of the existence of a Planning agreement affecting the land and for the enforcement of a Planning agreement. Registration on the land title may bind future owners of the land to the agreement. In these instances, provision will be made in a Planning agreement on when the notation of the Planning agreement on the title to the land may be removed.

## **18 Public use of privately-owned facilities**

- 18.1 If a Planning agreement provides for the Developer to make a privately-owned facility available for public use, CN may require the parties to enter into a separate implementation agreement in that regard.
- 18.2 The failure of the parties to reach agreement in relation to management and maintenance of the land or works will be dealt with under the dispute resolution provisions of the Planning agreement.

## **19 Public notification of Planning agreements**

- 19.1 In accordance with the Act, a Planning agreement (and Explanatory note) must be publicly notified and available for public inspection for a minimum period of 28 days. CN may decide to notify a Planning agreement for a longer period or renotify a Planning agreement after public a public notice has been given if in CN's opinion, a material change is proposed affecting the terms of the Planning agreement.
- 19.2 The draft Planning agreement should be notified with the application to which a Planning agreement relates.

## **20 Planning agreement register**

- 20.1 CN is required to keep a register of Planning agreements applying to land within Newcastle LGA. A copy of the Planning agreements register is available on our website.

## **21 Monitoring and review of Planning agreements**

- 21.1 The nominated project manager will continuously monitor the performance of the Developer's obligations under a Planning agreement. This may include CN requiring the Developer (at their cost) to report periodically on its compliance with obligations under the Planning agreement.
- 21.2 CN 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 Planning agreement.
- 21.3 CN will require the Planning agreement to contain a provision requiring the parties to participate in review discussions in good faith in order to agree on any recommended modifications to the Planning agreement as a result of the outcomes of the review.

## **22 Methodology for valuing public benefits under a Planning agreement**

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

### *Provision of land for a public purpose*

Where the benefit under a Planning agreement is the provision of land for a public purpose, the value of the benefit will be determined by an independent valuer who is experienced in valuing land in New South Wales and who is appointed by CN. All costs of the independent valuer in carrying out such a valuation will be borne by the Developer.

### *Carrying out of works for a public purpose*

Where the benefit under a Planning agreement is the carrying out of works for a public purpose, the value of the benefit will be determined by an independent quantity surveyor who is appointed by CN. CN will prepare the scope of work for the independent quantity surveyor based on the draft Planning agreement. All costs of the independent quantity surveyor in carrying out this work will be borne by the Developer.

### *Material public benefit*

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



## Annexure A – Definitions

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

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

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

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

**Council** means the elected Council.

**City of Newcastle (CN)** means Newcastle City Council.

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

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

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

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

**Development or Infrastructure contribution** means the provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used for or applied towards a public purpose.

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

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

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

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

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

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

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

**Planning proposal** has the same meaning as in the *EP&A Act*.

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

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

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

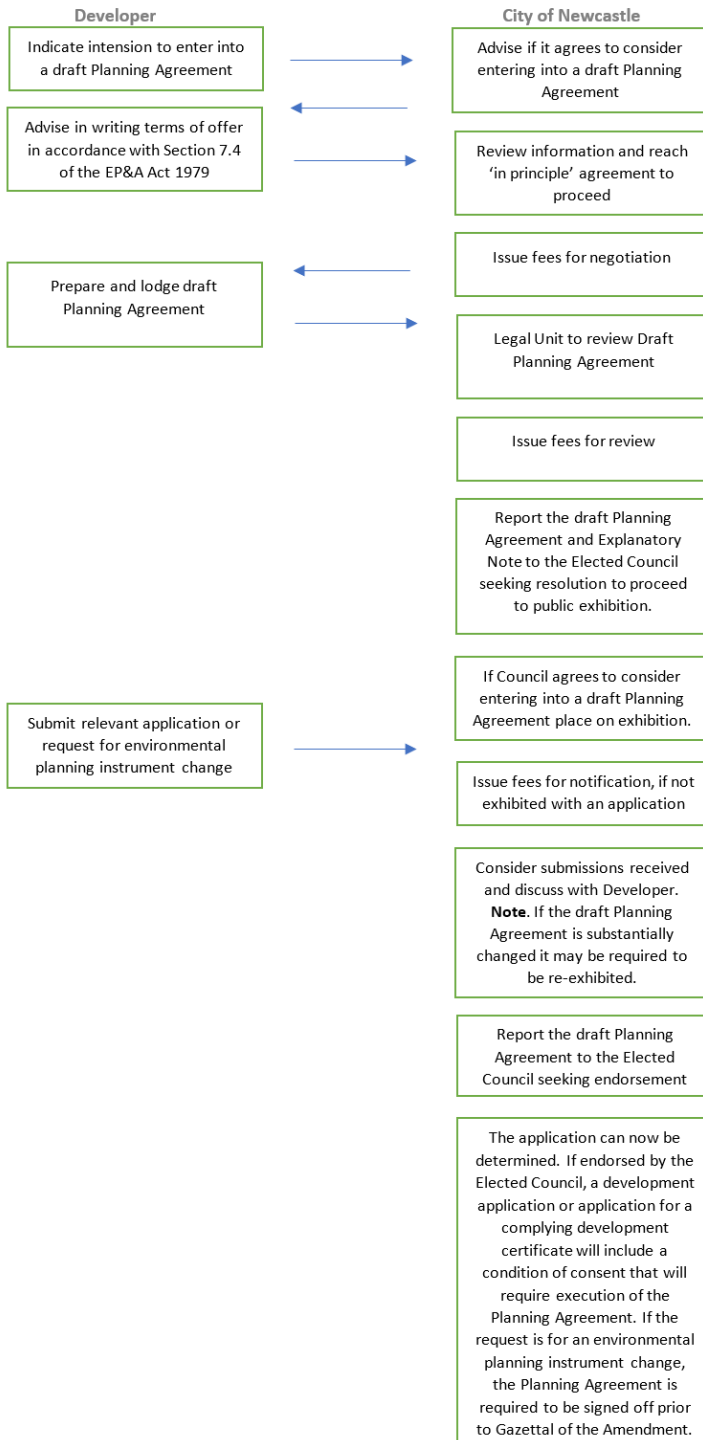
**Public purpose** means any purpose that benefits the public, including by not limited to a purpose specified in section 7.4 of the Act.

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

# Appendix 1 – Process to enter into a Planning agreement

**Process Name:** Entering into a Planning Agreement

**Process Intent:** Consistent and transparent process for entering into a Planning Agreement



## Appendix 2 - Planning Agreement Template

**PLANNING AGREEMENT NUMBER:** \_\_\_\_\_

Section 7.4 of the *Environmental Planning and Assessment Act, 1979*

### Parties

**NEWCASTLE CITY COUNCIL** of 12A Stewart Avenue, Newcastle NSW 2300 (**Council**)

**AND**

**NAME (A.C.N #)** of Address (**Developer**)

### Background

(For Development Applications)

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

(For Changes to Environmental Planning Instruments)

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

## Operative provisions

### 1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 4 of the Act.

### 2 Application of this Agreement

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

### 3 Operation of this Agreement

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

### 4 Definitions and interpretation

In this Agreement the following definitions apply:

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

**Agreement** means this agreement

**Business Day** means a day that is not a Saturday, Sunday or public holiday, on which banks are open for general services in Sydney, New South Wales

**Certifying Authority** means any accredited private certifier including where appropriate, a Principal Certifying Authority (PCA) appointed or to be appointed to certify the Development or any aspect of it;

**Council** means Newcastle City Council

**Construction Certificate** means any construction certificate in respect of the Development Consent;

**Development** means the development the subject of the Development Application and which is described in Item X of the Schedule;

**Development Application** means the development application described in Item X of the Schedule;

**Development Consent** means any development consent granted under the Act for all or part of the Development.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of Work or the provision of a material public benefit by the Developer, as referred to in Schedule XX but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s 7.4(3)(g) of the Act.

**GST** has the same meaning as in the GST Law.

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

**Instrument Change** means a Local Environmental Plan (LEP) which amends the LEP in the manner sought by the Developer in the instrument change application.

**Instrument Change Application** means the planning proposal by the Developer to amend the LEP.

**Land** means Lot DP, known as.

**LEP** means the Newcastle Local Environmental Plan 2012.

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

**Planning Proposal** means an application to amend the Newcastle Local Environmental Plan 2012

**Public Purpose** for the purpose of this Agreement means the public purpose described in Schedule XX.

**Registration Application** means an application for registration of this Agreement as a planning agreement on the title of the Land pursuant to Section 7 of the Act in a form approved by the Registrar General.

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

**Schedule** means the schedule to this Agreement.

## 5 Interpretation

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

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

## 6 Development Contributions to be made under this Agreement

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

**7 Application of the Development Contributions**

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

**8 Application of s7.11 and s7.12 of the Act to the Development**

[Specify whether and to what extent s7.11 and s7.12 apply to development the subject of this Agreement]

**9 Registration of this Agreement**

[Specify whether the Agreement is to be registered as provided for in 7.6 of the Act]

**10 Review of this Agreement**

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

**11 Dispute Resolution**

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

**12 Enforcement**

[Specify the means of enforcing the Agreement]

**13 Notices**

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

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

**Council**

**Attention:**

**Address:**

**Fax Number:**

**Email:**

**Developer**

**Attention:**

**Address:**

**Fax Number:**

**Email:**

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

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

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

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

#### **14 Approvals and consent**

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

#### **15 Release and Indemnity**

Each Party releases the other Party from any Claim it may have against the other Party arising in connection with the performance of their obligations under this Deed except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

Each Party indemnifies the other Party from and against all Claims that may be sustained, suffered, recovered or made against the other Party arising in connection with the performance of their obligations under this Deed except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

#### **16 Assignment and Dealings**

Until the Development Contribution is paid in full, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so.

#### **17 Entire agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

#### **18 Further acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

#### **19 Governing law and jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **20 Joint and individual liability and benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.



**21 No fetter**

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**22 Representations and warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

**23 Severability**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

**24 Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

**25 Waiver**

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

**26 GST**

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

**27 Costs**

[Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties] 49 Explanatory Note Relating to this Deed

**28 Explanatory Note**

The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.

Under clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Deed.

**Execution**

**Dated:**

**Executed as an Agreement:**

# Appendix 3 – Explanatory Note Template

Environmental Planning and Assessment Regulation 2000  
(Clause 25E)

## Explanatory Note

### Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

- 1 **Parties**  
(Planning Authority)  
(Developer)
- 2 **Description of Subject Land**
- 3 **Description of Proposed Change to Environmental Planning Instrument/Development Application**
- 4 **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**
- 5 **Assessment of the Merits of the Draft Planning Agreement**
- 6 **The Planning Purposes Served by the Draft Planning Agreement**
- 7 **How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979**
- 8 **How the Draft Planning Agreement Promotes the Public Interest**
- 9 **The Impact of the Draft Planning Agreement on the Public or Any Section of the Public**
- 10 **Any requirements of the Draft Planning Agreement that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**
- 11 **Other Matters**

For Planning Authorities:

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

**Signed and Dated by All Parties**

## Document Control

<b>Procedure title</b>	Planning Agreement Procedure
<b>Procedure owner</b>	Regulatory, Planning and Assessment
<b>Prepared by</b>	Regulatory, Planning and Assessment
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