



Parkes Shire Planning Agreement Policy 2016

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1. POLICY FRAMEWORK

1.1 Name

This Policy is the *Parkes Shire Planning Agreement Policy 2016* ("the Policy").

1.2 Application

This Policy applies to development applications lodged pursuant to *Parkes Local Environmental Plan 2012* ("LEP") and Planning Proposals seeking a change the LEP.

1.3 Land to which the Policy applies

This Policy applies to the Parkes Local Government Area.

1.4 Dates of Adoption and Effect

This Policy was adopted by resolution of the Council on 2 August 2016. The Policy is effective from 5 August 2016.

1.5 Intent

This Policy states Council's approach to the consideration and administration of Planning Agreements lodged pursuant to Section 93F of the Environmental Planning and Assessment Act 1979 (the Act).

1.6 Objectives

The objectives of this Policy are to:

- (a) Provide a consistent, fair, transparent and accountable approach to the use of Planning Agreements by the Council;
- (b) Set out the Council's policies and procedures relating to the use of Planning Agreements;
- (c) Provide guidance to developers and the wider community on the use of Planning Agreements;
- (d) To enhance the range and extent of development contributions made by development towards public facilities in the Council's area;
- (e) To provide for a generally applicable test for determining the acceptability of a Planning Agreement, which embraces amongst other things concepts of reasonableness, and
- (f) To provide for a more flexible development contributions system.

1.7 Statutory framework

Under Section 93F of the Act a Planning Agreement may be made between a planning authority and a person (developer):

- a) *who has sought a change to an environmental planning instrument (such as a Rezoning Application / 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 to whom paragraph (a) or (b) applies.*



under which the developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

Section 93F(2) of the Act states that:

A public purpose includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,*
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,*
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,*
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,*
- (e) the monitoring of the planning impacts of development,*
- (f) the conservation or enhancement of the natural environment.*

1.8 Mandatory Requirements of a Planning Agreement?

Section 93F(3) of the Act requires Planning Agreements to include:

- (a) a description of the land to which the agreement applies,*
- (b) a description of:*
 - (i) the change to the environmental planning instrument to which the agreement applies, or*
 - (ii) the development to which the agreement applies,*
- (c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,*
- (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A of 94EF to the development,*
- (e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94,*
- (f) mechanism for the resolution of disputes under the agreement,*
- (g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.*

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

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



1.9 Content of Planning Agreements

The matters that might be addressed in Planning Agreements include but are not limited to:

- (a) Whether the Planning Agreement(s) meets the demands created by the development for new public infrastructure, amenities and services;
- (b) If inclusions in the development meet specific public benefits, particularly those needs identified in Councils Community Strategic Plan;
- (c) Compensate for the loss of or damage to a public amenity, service, resource or asset that will or is likely to result from the carrying out of development the subject of the Agreement;
- (d) Whether recurrent funding of public facilities is required or provided;
- (e) The extent to which the Council needs to monitor the planning impacts of development, and
- (f) Whether planning benefits for the wider community accrue from the Planning Agreement.

1.10 Application of other development contributions

A Planning Agreement may wholly or partly exclude the application of section 94 or section 94A of the Act to development to which the Agreement relates. This is a matter for negotiation between Council and a developer having regard to the particular circumstances of the case.

If the Planning Agreement does not exclude the application of section 94 to the development, it must state whether benefits under the Agreement are or are not to be taken into consideration in determining a development contribution under section 94.

1.11 Limitations

Section 93F(9) of the Act states an important limitation:

A Planning Agreement cannot impose an obligation on a planning authority:

- (a) *to grant development consent, or*
- (b) *to exercise any function under this Act in relation to a change to an environmental planning instrument.*



2. PRINCIPLES

2.1 Principles underlying the use of Planning Agreements

Council will apply the following principles:

- (a) *The negotiation of a Planning Agreement is at the absolute discretion of the Council.*
- (b) *Planning decisions will not be bought or sold through Planning Agreements.*
- (c) *The Council will not allow Planning Agreements to improperly fetter the exercise of its functions under the act, regulation or any other act or law.*
- (d) *The Council will not use Planning Agreements for any purpose other than a proper planning purpose.*
- (e) *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. Council will not enter a Planning Agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in Section 79C of the Act. Any exceptions to relevant development standards will be assessed in accordance with the provisions set out in cl.4.6 of Parkes LEP 2012*
- (f) *The Council will not take into consideration Planning Agreements that are wholly unrelated to an application, nor will the Council give undue weight to a Planning Agreement.*
- (g) *The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed Planning Agreement.*
- (h) *The Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under Planning Agreements.*
- (i) *Council will avoid, wherever possible, being party to Planning Agreements where they also have a stake in the development the subject of the Agreements.*
- (j) *Council will not improperly rely on its peculiar statutory position in order to extract unreasonable public benefits from developers under Planning Agreements.*



3. NEGOTIATION PROCEDURES

3.1 Introduction

Council aims to negotiate Planning Agreements in a way that is efficient, predictable, transparent and accountable. Where possible:

- A Planning Agreement should be negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.
- The final negotiation of Planning Agreements should be co-ordinated with Planning Proposals /rezoning or development applications so as not to unduly delay the approval.
- Council will publicly notify a Planning Agreement in the same manner and at the same time as the application for the instrument change or the development application to which it relates.
- A Planning Agreement should be negotiated and documented before it is publicly notified as required by the Act and Regulation

3.2 Process

The negotiation of a Planning Agreement will generally involve the following steps:

- (a) *Prior to the lodgement of the relevant application by the developer, the Council and Developer (and any other relevant person) should decide whether to negotiate a Planning Agreement.*
- (b) *The parties may decide to appoint an independent person to facilitate or otherwise participate in the negotiations. In many cases, an independent person may not be considered necessary.*
- (c) *A timetable and process for negotiations should be agreed by the parties.*
- (d) *The key issues for negotiation should be agreed by the parties.*
- (e) *Once Agreement on the content of the Planning Proposal is reached a draft proposed Planning Agreement including the explanatory statement should be prepared by one of the parties, and provide a copy of it to the other parties.*
- (f) *Further negotiation is carried out (if necessary), and Agreement of the parties' is reached on the Planning Agreement and explanatory note.*
- (g) *The developer makes the application to the Council accompanied by the proposed Agreement.*
- (h) *The proposed Agreement will be reported to Council, and Council will resolve whether or not to adopt a recommendation to exhibit proposed Planning Agreement (Council may choose to reject the Planning Agreement at this stage).*
- (i) *The Council will publicly exhibit the development application/Planning Proposal and Planning Agreement, in accordance with the Act.*
- (j) *Any consequential amendments required to the application and draft Agreement are made, if necessary exhibited.*
- (k) *Following exhibition, assessment is undertaken by Council officers and reported to Council.*
- (l) *The parties may undertake further negotiations as a result of the public notification and inspection of the Planning Agreement or its formal consideration*



by the Council in connection with the relevant application.

- (m) Council resolves to adopt the proposed Planning Agreement.*
- (n) If the application is a development application and is granted consent, a condition may be imposed requiring the Planning Agreement to be entered into in terms of the developer's offer. The planning authority would resolve to execute the Agreement when approving the application. If the application is approved on terms different to the developer's offer, the Agreement could not be required to be entered into.*
- (o) Copies of the Planning Agreement are prepared for execution by the parties. Once executed a copy is to be retained by each party.*
- (p) The Planning Agreement Register will be updated and maintained by the Council and monetary contributions and/or works will be tracked by the relevant Council responsibility areas.*

Note:

- costs associated with the negotiation of a Planning Agreement, such as the appointment of an independent person, and legal advice are to be borne by the developer.
- where the value of the development exceeds \$20 million the development application will be dealt with by the independent Joint Regional Planning Panel or any other relevant planning authority.



4. PROBITY

In order to ensure that the process of negotiating and finalising a Planning Agreement has the highest integrity and probity, Council will:

- (a) Conduct its business in a way consistent with its wide range of policies addressing such matters as ethics, code of conduct, and fraud and corruption prevention. In particular, Council will adhere the practices inherent in its Statement of Business Ethics.
- (b) Communicate clearly and openly to build understanding in the community about the role of Planning Agreements consistent with its Communications Policy and Statutory Obligations
- (c) Notify Planning Agreements in an open and transparent way. In particular, Council will aim to achieve maximum public awareness of the matters contained in a Planning Agreement(s) and the potential benefits of an Agreement.
- (d) Ensure appropriate delegations and separation of responsibilities in considering development applications/Planning Proposals that involve Planning Agreements – achieving a prudent balance between adequately addressing the level of risk of corruption of a process and the likely level of risk.
- (e) Assign a specific officer with appropriate delegated authority to negotiate a Planning Agreement on behalf of the Council
- (f) Ensure modifications to approved development are subject to the same scrutiny as the original development application.
- (g) Ensure Councillors and Council staff understand their roles, including Councillors not being involved in the face to face negotiation of the Agreement
- (h) Ensure that conflicts of interest addressed to the greatest extent possible – such as, independent assessment by third parties where Council has an interest, and not entering into any contractual arrangement which purport to guarantee outcomes that are subject to separate regulatory processes.
- (i) Ensure Council staff with responsibility for providing advice on approvals, approving applications or ensuring compliance, do not have a role in the assessment of the commercial aspects of the Agreement, or on the conditions of the Planning Agreement, except where advice is required on matters relating to the conditions of consent for a particular proposal.
- (j) Involve an independent person(s) to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome.
- (k) Ensure that all negotiations with a developer/proponent and their consultants are sufficiently separated and documented.
- (l) Ensure where the Council has a commercial stake in development the subject of an Agreement, it will avoid a conflict of interest between its role as a planning authority and its commercial interest in the development, such as by ensuring a clear separation of roles, staff and lines of responsibility between Council's planning authority and commercial functions.
- (m) Ensure applications involving Planning Agreements which involve Council land, or development applications made by or on behalf of Council, are independently assessed by an external planning consultant.



5. ACCEPTABILITY TEST

The NSW Government Development Contributions Practice Note refers to the importance of applying a test for to determine the applicability of a Planning Agreement. Accordingly, Council will apply such a test to all proposed Agreements to ensure that they:

- (a) Are directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development;
- (b) Provide for public benefits that bear a relationship to the development;
- (c) Produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- (d) Provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits;
- (e) Are consistent with this policy;
- (f) Promote the future directions and strategic objectives of council's community strategic plan, and
- (g) Protect the community against planning harm.

5.1 Net Community Benefit

Council will usually enter into a Planning Agreement if there is a net community benefit from doing so.

The value of the development contributions to be provided under a Planning Agreement, less the value of the contributions and or development works the developer would have been required to make in respect of the development, should be greater than had the Planning Agreement not been entered into.

Council will apply the following test to assess the monetary value of a draft Agreement in order to establish the net community value.

Net community benefit = Proposed planning agreement contributions – (s80A Developer Works + s94 Contributions)

where:

s80A Developer Works: Works required to serve the development itself and or conditioned as part of the development consent.

s94 Contributions: Payments required to be paid under a Section 94 or 94A contributions plan.

Proposed planning agreement developer contributions: The contributions proposed via agreement, either monetary, dedication of land or the provision of material public benefits.

Net community benefit: The community benefit must be greater than the value of the development works and contributions. Positive values mean potential net community benefit. Negative values indicate that Council would potentially be worse off by entering into the proposed agreement.



6. NOTIFICATION AND EXHIBITION

6.1 Public notification

In accordance with the Act, a Planning Agreement must be publicly notified and available for public inspection for a minimum period of 28 days.

During this time Council will make the Planning Agreement, explanatory statement and any other relevant documents available for public comment, consistent with statutory requirements and its normal procedures.

The Council will also notify the application to which a Planning Agreement relates, in accordance with the Act.

In the case of development applications, the Planning Agreement is usually advertised separate to the development application once satisfactory negotiations have taken place.

In the case of Planning Proposals, the Planning Agreement will be advertised at the same time as the Planning Proposal during the exhibition period.

The Council may publicly re-notify and make available for public inspection a proposed Planning Agreement and the application to which it relates if, a material change is made to the terms of the Agreement or the application after it has been publicly notified and inspected



7. IMPLEMENTATION AND CONDITIONS

7.1. Form of the Planning Agreement and explanatory statement

In order to assist in the preparation of Planning Agreements and to achieve consistency, a template Planning Agreement on which a Planning Agreement should be based is at Attachment 1. A template explanatory note is at Attachment 2.

7.2 Entering into a Planning Agreement

A Planning Agreement is entered into when it is signed by all of the parties. A Planning Agreement can be entered into at any time after the Agreement is publicly notified in accordance with the Act and Regulation.

Council will usually require a Planning Agreement to be entered into as a condition of granting development consent to the development to which the Agreement relates or as part of the Gateway process for a Planning Proposal.

7.3 Planning Agreement Obligation

The Council will generally require a Planning Agreement to provide that the developer's obligations must be met:

- prior to the issuing of any construction certificate related to the subject development application;
- on notification of an environmental planning instrument;
- on another event agreed by the parties.

7.4 Modification and discharge of developer's obligations.

Planning Agreements should set out the circumstances in which the parties agree to modify or discharge the developer's obligations under the agreement. The modification or discharge should be effected by an amendment to the agreement. The circumstances that may require Planning Agreements to be modified or discharged may include the following:

- *The developer's obligations under the agreement have been met,*
- *material changes to the planning controls applying to the land to which the agreement applies,*
- *a material modification to the development consent to which an agreement relates, modified to such an extent that the planning obligations may not be appropriate,*
- *the lapsing of the development consent to which an agreement relates,*
- *the revocation or modification of a development consent to which an agreement relates by the Minister,*
- *other material changes in the overall planning circumstances of an area affecting the operation of the Planning Agreement*
- *The developer/proponent has fully and completely assigned the developer's/proponent's interest under the agreement in accordance with its terms,*
- *The Council and the developer/proponent otherwise agree to the modification or discharge of the agreement, consistent with statutory requirements.*



7.5 Pooling of development contributions

Planning Agreements should specifically provide that monetary contributions paid under different Planning Agreements are to be pooled and progressively applied towards the provision of public benefits that relate to the various Agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

7.6 Implementation Agreements

The Council may require an implementation agreement that provides for matters such as:

- (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.*

7.7 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.

7.8 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, or permit any dealing in relation to any part or the whole of the land the subject of the agreement unless:

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

7.9 Provision of security under a Planning Agreement

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

In respect of contributions in the form of land, Council will require a Planning Agreement to include provisions allowing Council to acquire any land to be dedicated for \$1 if the developer defaults.



7.10 Preparation and Form of the Planning Agreement

Unless otherwise agreed by the parties in a particular case, a Planning Agreement will be prepared by Council at the developer's cost. The Council will generally require the Planning Agreement to be in or to the effect of the standard-form Planning Agreement.

7.11 Council's Costs of Negotiating, Entering into, Monitoring and Enforcing a Planning Agreement

The Council will generally require a Planning Agreement to make provision for payment by the developer of the Council's costs of and incidental to:

- a) negotiating, preparing and entering into the Agreement (including but not limited to staffing costs, consultants fees, legal fees);
- b) registration of the Agreement on the title of any relevant land, and
- c) enforcing the Agreement.

Council may require the Planning Agreement to make provision for a development contribution by the developer towards the ongoing administration of the Agreement, should this be relevant.

7.12 Notations on Certificates under Section 149 of the Act

The Council will generally require a Planning Agreement to contain an acknowledgement by the developer that the Council may, in its absolute discretion, make a notation under section 149 of the Act about a Planning Agreement on any certificate issued under section 149 of the Act relating to the land the subject of the Agreement or any other land.

7.13 Registration of Planning Agreements

The Council may require a Planning Agreement to contain a provision requiring the developer to agree to registration of the Agreement pursuant to Section 93H of the Act if the requirements of that section are satisfied.

7.14 Planning Agreement Register

Council is required keep a register of planning agreements that apply in the Local Government Area, whether or not Council is a party to a planning agreement.

The Register should state the date an agreement was entered into and a short description of the agreement (including any amendment).

Council will make the following available for public inspection:

- copies of Planning Agreements (including amendments), and
- copies of the related explanatory notes.

The Planning Agreement Register will be updated and maintained by the Council and monetary contributions and/or public domain works will be tracked by the relevant Council responsibility areas.

7.15 Dispute Resolution

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



Attachment 1: Planning Agreement Template

(Between Council and Developer)

PLANNING AGREEMENT

Parties

of ##, New South Wales (Council)

and

of ##, New South Wales (Developer).

Background

(For Development Applications)

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

(For Changes to Environmental Planning Instruments)

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

Operative provisions

1. Planning Agreement under the Act

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

2. Application of this Agreement

[Drafting Note 2: Specify the land to which the Agreement applies and the development to which it applies]

3. Operation of this Agreement

[Drafting Note 3: Specify when the Agreement takes effect and when the Parties must execute the Agreement]

4. Definitions and interpretation

- 4.1 In this Agreement the following definitions apply:

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

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

Development means ##

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.



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

GST has the same meaning as in the GST Law.

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

Instrument Change means ## Local Environmental Plan ##.

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

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

Public Facilities means ##.

Regulation means the Environmental Planning and Assessment Regulation 2000.

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

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

5 Development Contributions to be made under this Agreement

[Drafting Note 5: Specify the development contributions to be made under the Agreement; when they are to be made; and the manner in which they are to be made]

6 Application of the Development Contributions

6.1 [Specify the times at which, the manner in which and the public purposes for which



development contributions are to be applied]

- 7 Application of s94 and s94A of the Act to the Development
[Drafting Note 7: Specify whether and to what extent s94 and s94A apply to development the subject of this Agreement]
- 8 Registration of this Agreement
[Drafting Note 8: Specify whether the Agreement is to be registered as provided for in s93H of the Act]
- 9 Review of this Agreement
[Drafting Note 9: Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur].
- 10 Dispute Resolution
[Drafting Note 10: Specify an appropriate dispute resolution process]
- 11 Enforcement
[Drafting Note 11: Specify the means of enforcing the Agreement]
- 12 Notices
 - 12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (a) Delivered or posted to that Party at its address set out below.
 - (b) Faxed to that Party at its fax number set out below.
 - (c) Emailed to that Party at its email address set out below.

Council
Attention: ##
Address: ##
Fax Number: ##
Email: ##

Developer
Attention: ##
Address: ##
Fax Number: ##
Email: ##
 - 12.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
 - 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's
 - (d) fax machine a report of an error free transmission to the correct
 - (e) fax number.



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

13 Approvals and consent

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

14 Assignment and Dealings

[Drafting Note 14: Specify any restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restrictions apply]

15 Costs

[Drafting Note 15: Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties]

16 Entire Agreement

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

17 Further acts

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

18 Governing law and jurisdiction

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

19 Joint and individual liability and benefits

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

20 No fetter

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

21 Representations and warranties

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



22 Severability

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

23 Modification

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

24 Waiver

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

25 GST

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

Execution

Dated: ##

Executed as an Agreement: ##



Attachment 2: Explanatory Note Template

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

1 Parties

(Planning Authority)

(Developer)

2 Description of Subject Land

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

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

5 Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

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

How the Draft Planning Agreement Promotes the Public Interest

For Planning Authorities:

(a) Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

(b) Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted

(c) Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

(d) All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

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

Other Matters

Signed and Dated by All Parties

