

# ATTACHMENT BOOKLET

ORDINARY COUNCIL MEETING  
18 MAY 2026

BOOK 2

LIVERPOOL  
CITY  
COUNCIL



LIVERPOOL CIVIC TOWER COUNCIL  
CHAMBER, LEVEL 1, 50 SCOTT STREET,  
LIVERPOOL NSW 2170

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## Planning Agreements Policy

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**Liverpool City Council**  
**Planning Agreements Policy**

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## Liverpool City Council Planning Agreements Policy

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### 1 Legislative Framework

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#### 1.1 What is a Planning Agreement

A Planning Agreement is a voluntary agreement or other arrangement between a planning authority (or two (2) or more planning authorities) and the Developer 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.

#### 1.2 Relevant Legislation

The current legal and procedural framework for Planning Agreements is set in Subdivision 2 of Part 7 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* as well as Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation 2000 (EP&A Regulation)*.

New development creates the need for additional public amenities and public services. Division 7.1 of Part 7 of the EP&A Act empowers Council to require new development to contribute towards the provision of these public services and amenities and Planning Agreements are one mechanism to achieve this outcome.

#### 1.3 Who can enter into a Planning Agreement

Section 7.4 of the EP & A Act sets out the circumstances under which a Planning Agreement may be entered into by Council. It provides that a Planning Agreement may be made between a planning authority (or two (2) or more planning authorities) and a person (**Developer**):

- (1) who has sought a change to an environment planning instrument (such as a rezoning application);
- (2) who has made, or proposes to make, a Development Application; **or**
- (3) who has entered into, **or intends to enter into**, an agreement with, or is otherwise associated with, a person in one (1) of the above two (2) categories.

#### 1.4 Council's Community Strategic Plan

In considering whether to accept an offer to enter into a Planning Agreement, Council will have regard to its then current Community Strategic Plan, and in particular whether the proposed Planning Agreement is **not inconsistent** with that Community Strategic Plan.

Council will not enter into a Planning Agreement which is inconsistent with its then current Community Strategic Plan.

### 2 Purpose of this Policy

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#### 2.1 Purpose generally

The purpose of this Policy is to provide clarity and certainty to Developers as to:

- (1) the **circumstances** in which a Planning Agreement may be entered into with Council;
- (2) Council's **requirements** for its consideration of an offer to enter into a Planning Agreement; and

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- (3) the **process** that needs to be undertaken in order to negotiate and enter into a Planning Agreement with Council.

### 2.2 Specific purposes

- (1) The purposes of this Policy are as set out below:
- (a) Establish a fair, transparent and accountable **framework governing** the use of Planning Agreements by Council.
  - (b) **Expand the range and extent of Development Contributions** that may be made by development towards Public Facilities and other public benefits in Council's local government area.
  - (c) **Set out Council's specific policies and procedures** relating to the use of Planning Agreements within Council's local government area.
  - (d) Give stakeholders in development greater involvement in determining the **type, standard and location of Public Facilities** and other Public **Benefits**.
  - (e) Facilitate **public notification** and to allow the community to gain an understanding of the benefits of proposed Planning Agreements.
  - (f) Specify the **information** to be **submitted to Council** for the purpose of considering an offer to enter into a Planning Agreement.
  - (g) Adopt innovative and **flexible** approaches to the provision of infrastructure and other Public Benefits through the use of Planning Agreements in a manner that is **consistent** with Council's **Community Strategic Plan**.
  - (h) Allow Council to consider Planning Agreements which achieve Planning Benefits to the wider community.

### 3 Definitions

In this Policy the words set out below have the specific meaning attributed to them.

Term	Meaning
<b>EP &amp; A Act</b>	<i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Council</b>	Liverpool City Council.
<b>Developer</b>	A person/entity that falls within the definition set out in clause 1.3 of this Policy.
<b>Development Application</b>	Has the same meaning as in the EP&A Act.
<b>Development Contribution</b>	A contribution provided by the Developer under a Planning Agreement.
<b>DCP</b>	Development Control Plan.
<b>Explanatory Note</b>	A written statement that provides details of the objectives, nature, effect and merits of a Planning Agreement, or an amendment to or

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	revocation of a Planning Agreement as required under the Regulation.
<b>LEP</b>	Local Environmental Plan.
<b>Planning Benefit</b>	A Development Contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.
<b>Public</b>	The community as a whole or, where the context requires, a section of the community.
<b>Public Benefit</b>	The benefit enjoyed by the public as a consequence of a Development Contribution.
<b>Public Facilities</b>	Public infrastructure, facilities, amenities and services.
<b>Public Purpose</b>	Includes (without limitation) any of the following: <ol style="list-style-type: none"> <li>(1) The provision of (or the recoupment of the cost of providing) public amenities or public services.</li> <li>(2) The provision of (or the recoupment of the cost of providing) affordable housing.</li> <li>(3) The provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.</li> <li>(4) The funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or other infrastructure.</li> <li>(5) The monitoring of the planning impacts of a development.</li> <li>(6) The conservation and enhancement of the natural environment.</li> </ol>
<b>Regulation</b>	<i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
<b>SEPP</b>	State Environmental Planning Policy.

**Note:** Unless otherwise specified, this Policy adopts the terms used in the *Practice Note on Planning agreements* published by the former Department of Planning and Natural Resources (July 2005) and the definitions set out in the EP & A Act and the Regulation.

## 4 Overview of Planning Agreements

### 4.1 Circumstances for preparing a Planning Agreement

The acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council. Planning Agreements are voluntary, but once entered into, they become legally binding contracts that apply to the development and the land to which they apply.

A Planning Agreement is normally, but not exclusively, entered into in one (1) of the following circumstances:

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- (1) In relation to a change to a SEPP or LEP.
- (2) In relation to a Development Application, where the Developer agrees to provide Development Contributions in lieu of, or in addition to, contributions under sections 7.11 and 7.12 of the EP & A Act.
- (3) In relation to a development where there is a shortfall in the provision of a particular item, such as car parking in Liverpool City Centre, or open space.

### 4.2 Timing of Development Contributions

A Planning Agreement must contain a time, or times, by which each Development Contribution provided under the Planning Agreement must be provided. The timing of the provision of each Development Contribution must be acceptable to Council, who must ensure that each Development Contribution is provided by a time which ensures that the public need for the relevant item is met.

### 4.3 Pooling of funds

In some circumstances, such as the provision of parking in the Liverpool City Centre, it is necessary to pool funds from multiple Planning Agreements or Contribution Plans in order to allow Council to provide works or services in an efficient manner. The pooling of funds will only be considered where it will be the most effective method of providing a Public Benefit having regard to the circumstances of a particular matter.

### 4.4 Relationship of a Planning Agreement to Contribution Plans

A Planning Agreement differs from development contributions under s7.11 or s7.12 of the EP & A Act in that it may require the Developer to construct items itself, at its cost, rather than pay a monetary sum to Council, with Council undertaking the construction of the relevant item. Under a s7.11 contributions plan Council can only require a Developer to pay a monetary contribution, or dedicate land free of charge, or both.

A Planning Agreement may be entered into where there is already a Contributions Plan in place or it may be entered into where there is no current Contributions Plan.

A Planning Agreement may exclude, in whole or in part, the application of either or both of s7.11 and s7.12 of the EP & A Act depending on the nature and extent of the Development Contributions being provided under the Planning Agreement.

## 5 Principles governing the use of Planning Agreements

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### 5.1 Generally

Council's use of Planning Agreements will be governed by the following principles:

- (1) Planning decisions **will** not be bought or sold through Planning Agreements.
  - (2) A Planning Agreement cannot impose an obligation to grant development consent or to exercise any function under the EP & A Act in relation to a change to an environmental planning instrument.
  - (3) Council will not allow Planning Agreements to improperly fetter the exercise of its functions under the EP & A Act, the Regulation or any other Act or Regulation.
  - (4) Council will not use Planning Agreements for any purpose other than a **proper planning purpose**.
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- (5) Development that is unacceptable on planning grounds **will** not be permitted because of Planning Benefits offered by Developers.
- (6) Council will not seek or consider benefits under a Planning Agreement that are wholly unrelated to particular development.
- (7) **When considering a Development Application or Instrument Change, Council will not give undue weight to a Planning Agreement.**
- (8) Council will not allow the interests of individuals, lobbyists, or interest groups to outweigh the public interest when considering a proposed Planning Agreement;
- (9) Council will not improperly rely on its position in order to extract unreasonable public benefits from Developers under Planning Agreements.
- (10) A Planning Agreement must produce outcomes that are consistent with Council's Community Strategic Plan.
- (11) Council will not enter a Planning Agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the objects set out in s1.3 of the EP & A Act and the general heads of consideration set out in s4.15 of the EP & A Act.
- (12) A Planning Agreement may propose measures that can address planning issues that have been identified with respect to the relevant Development Application.

It is noted that any exceptions to relevant development standards cannot be addressed by a Planning Agreement and instead must only be assessed in accordance with the relevant Environmental Planning Instruments.

### 5.2 Acceptability test

Council will only agree to accept an offer to enter into a Planning Agreement after considering whether the Planning Agreement meets the acceptability test referred to below.

For a Planning Agreement to be acceptable to Council it must:

- (1) be for proper **or** legitimate planning purposes, that can be identified from the statutory planning controls and other adopted planning policies applying to development;
- (2) provide for Public Benefits that bear a relationship to the development that are not wholly unrelated to the development **and are located in the locality in which the development is situated;**
- (3) produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- (4) provide for a reasonable means of achieving the outcomes and securing the Public Benefits proposed; **and**
- (5) protect the public against unreasonable, adverse **environmental or amenity impacts.**

### 5.3 Planning Agreements and Council's compulsory acquisition power

A Planning Agreement may include an obligation on a Developer to make a monetary Development Contribution to Council to meet some, or all, of the costs incurred by Council in undertaking the acquisition of land.

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A Planning Agreement **cannot impose an obligation on Council to use the compulsory acquisition power conferred on it** under the *Local Government Act 1993* (NSW) and the *Land Acquisition (Just Terms Compensation) Act 1989* (NSW).

Any such acquisition of land by Council may only be undertaken for a public purpose, and is subject to the approval of the Minister and the Governor. Council will not agree to compulsorily acquire land in a Planning Agreement where such an acquisition is for the sole benefit of the Development and does not serve a broader public purpose.

If Council resolves to acquire land for which a monetary Development Contribution is required to be paid under a Planning Agreement, Council cannot be subject to an obligation to acquire that land by a certain time, or at all.

## 6 Negotiating a Planning Agreement

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### 6.1 Offer of a Planning Agreement

Generally a Planning Agreement should be **offered, negotiated and documented before lodgement of a Development Application, or before Gateway approval for a planning proposal** so as to allow the proposed Planning Agreement to be publicly exhibited simultaneously with the relevant Development Application or Planning Proposal.

Where possible, Council will publicly notify a Planning Agreement at the same time as the application for the Planning Proposal or the Development Application to which it relates.

### 6.2 Planning Agreements which relate to an amendment to a SEPP or LEP

- (1) Where:
  - (a) it is proposed to amend a SEPP or LEP to permit a development; and
  - (b) that development is likely to require the provision of public infrastructure or services,

an offer to enter into a Planning Agreement may be an option for the Developer to allow that public infrastructure or those services to be met.
- (2) Where a Developer offers to enter into a Planning Agreement in those circumstances, the offer must be supported by information identifying the scope of infrastructure needed to support the development and how this will be addressed by a Planning Agreement, including as a minimum by providing the information set out in Section 7.
- (3) Council may also require the following contributions to be made under any such Planning Agreement for an offer of a Planning Agreement to be acceptable to Council:
  - (a) Contributions required to be imposed by Council so as to meet the requirements of statutory authorities (such as RMS) in relation to the Planning Proposal.
  - (b) Contributions to studies which Council believes may be required to assess the impact of the proposed development.

### 6.3 Planning Agreements which relate to a Development Application

Where it is proposed to submit a Development Application and:

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- (1) the development is likely to require the provision of local public infrastructure or services in excess of those that would be provided under the Contributions Plan that applies to the site; or
- (2) contributions which differ from those that are proposed under the Contributions Plan that applies to the site,

an offer to enter into a Planning Agreement may be an option.

Where a Developer proposes a Planning Agreement it must be supported by information identifying the scope of infrastructure needed to support the development and how this need will be addressed by a Planning Agreement, including by providing the information set out in Section 7.

### 6.4 **A shortfall in the provision of a particular item such as car parking and/or open space land in Liverpool City Centre**

Where:

- (1) it is proposed to submit a Development Application for a development in Liverpool City Centre; and
- (2) the proposed on site car parking provision, and/or the proposed open space land provision, is less than that required by Council,

a Planning Agreement may be an option for paying a contribution to account for the shortfall.

In this circumstance, a Development Application must be accompanied by an offer to enter into a Planning Agreement with Council pursuant to which a monetary contribution is made to Council for the purpose of allowing Council to fund off site car parking, and/or open space land within Liverpool City Centre.

If the Developer proposes to make such an offer to enter into a Planning Agreement, then the Developer must provide the information set out in Section 7.

## 7 **Information required to be provided to Council**

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### 7.1 **Mandatory information and discretion of Council**

- (1) Subject to paragraph (2), an offer to enter into a Planning Agreement with Council must be supported by the information set out in this Section 7.
- (2) Council has a discretion as to:
  - (a) whether or not to require the Developer to provide all of the information in this Section 7; and
  - (b) whether or not to require the Developer to provide information that is not listed in this Section 7, but which Council considers necessary in order to allow it to assess any application to enter into a Planning Agreement.

### 7.2 **All offers for a Planning Agreement**

- (1) Name of proponent.
  - (2) A description of the land to which the Planning Agreement will apply.
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- (3) Owner's consent for all properties to which the Planning Agreement will apply.
- (4) Description of proposed development, including, where appropriate, proposed number of dwellings, floorspace, land use and land area.
- (5) Any additional parties to the Planning Agreement.
- (6) Information on relationship to relevant Council corporate strategy.
- (7) Any potential savings for existing contributions plan that applies to the site.
- (8) Any particular benefits for wider community.
- (9) Details on any staging of the development and commensurate staging of monetary Development Contributions, including thresholds for provision of infrastructure and or land.
- (10) Any dependencies for the proposed development or provision of infrastructure on other land holdings, provision of infrastructure by Council or another party.
- (11) Any infrastructure need to be provided on Council or other land.
- (12) Any infrastructure to be provided that involve a government authority.
- (13) Any consultation needed with a government authority.

### 7.3 Additional information where it is proposed to change a SEPP / LEP or submit a Development Application

- (1) Information on relationship to any adopted Council land use strategy (where applicable);
  - (2) Background studies identifying impacts on existing infrastructure and additional infrastructure needed to support the additional development proposed on the site. This may include but not be limited to infrastructure involving:
    - (a) affordable housing;
    - (b) transport or other infrastructure;
    - (c) recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
    - (d) monitoring of the planning impacts of development;
    - (e) conservation or enhancement of the natural environment;
    - (f) water management cycle;
    - (g) mitigation of environmental impacts;
    - (h) traffic, car parking and public transport facilities;
    - (i) community facilities;
    - (j) drainage services; and
    - (k) open space and recreation facilities.
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- (3) Background studies may also be required to identify any need to compensate for the loss of or damage to a public amenity, service, resource or asset such as:
  - (a) Public open space;
  - (b) Public car parking;
  - (c) Public access;
  - (d) Water and air quality;
  - (e) Bushland;
  - (f) wildlife habitat; and
  - (g) other natural areas.
- (4) Reference may be made to situations where several nearby sites may also be seeking a similar zoning change and how this might impact or provide opportunities for the provision of infrastructure;
- (5) Details on any staging of the development and commensurate staging of individual items of infrastructure, including thresholds for provision of infrastructure and or land;
- (6) Details of any or all land / facilities provided up front;
- (7) The nature of the security to be provided for the Public Benefits;
- (8) Maintenance impacts of proposed infrastructure;
- (9) Details of the component of the contributions that would normally payable and that would be replaced by the Planning Agreement;
- (10) Identification of any potential savings for existing contributions plan that applies to the site;
- (11) Identification of any particular benefits for wider community;
- (12) Identification of any dependencies for the proposed development or provision of infrastructure on other land holdings, provision of infrastructure by Council or another party;
- (13) Identification of any infrastructure that needs to be provided on Council or other land;
- (14) Identification of any infrastructure to be provided that involves a government authority;
- (15) Identification of any consultation needed with a government authority; and
- (16) Identification of any infrastructure that is needed before any development can commence.

### **7.4 Additional information where there is a shortfall in the provision of a particular item such as car parking or open space in Liverpool City Centre**

- (1) The number of the shortfall in the required car parking spaces or are of open space; and
  - (2) Information on relationship to Liverpool DCP 2008, Part 4 Development in Liverpool City Centre.
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### 7.5 Matters that Council will consider

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

- (1) the Planning Agreement meets the demands created by the development for new public infrastructure, amenities and services;
- (2) inclusions in the development meet the objectives of Council's Community Strategic Plan;
- (3) compensation is required for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration;
- (4) rectification of an existing deficiency in the existing provision of Public facilities in Council's area is made;
- (5) recurrent funding of Public Facilities is required or provided;
- (6) the extent to which Council needs to monitor the planning impacts of development;
- (7) planning Benefits for the wider community accrue from the Planning Agreement;
- (8) mitigation of the impact of development is addressed;
- (9) recurrent funding of Public Facilities is required in the establishment phase;
- (10) past deficiencies in infrastructure provision that would otherwise prevent a development from occurring are addressed;
- (11) monitoring the planning impacts of development is required by the Developer;
- (12) any initial or ongoing costs are designated as Council's responsibility;
- (13) the timing of providing works or services is appropriate;
- (14) there are any relevant circumstances that may operate to preclude Council from entering into the proposed Planning Agreement;
- (15) the proposed Planning Agreement will provide benefits that bear a relationship to the delivery of services and infrastructures within Liverpool LGA; and
- (16) the quantum of the Public Benefit is commensurate with the value of the development contribution.

## 8 Procedure

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### 8.1 Probity

Public probity is important to Council and it will ensure that the negotiation and the outcome of any Planning Agreement is fair, transparent and is directed at achieving Public Benefits in an appropriate manner free of actual or perceived corrupt conduct or maladministration.

In this regard, Council will:

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- (1) inform any applicant about Council's values and business ethics, specifically, about ethical behaviour appropriate to business dealings in accordance with Council's Code of Conduct;
- (2) ensure that the local community is informed about the system and the Council's role, specifically, how the Planning Agreement system operates and how Council will deal with developments objectively;
- (3) notify Planning Agreements to ensure they are open and transparent, specifically achieving maximum public awareness of the matters contained in a Planning Agreement and the potential Public Benefit of an agreement;
- (4) ensure appropriate delegations and separation of responsibilities in considering planning proposals and Development Applications that involve a Planning Agreement, specifically the need to ensure processes adequately address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk;
- (5) ensure that modifications to approved development should be subject to the same scrutiny as the original Development Application;
- (6) ensure that Councillors and members of Council staff understand their varied roles, to avoid any perceived or actual conflict of interest; and
- (7) take every step to ensure that conflicts of interest are ameliorated to the greatest extent possible, specifically, independent assessment by third parties where Council has an interest and not entering into any contractual arrangement which purports to guarantee outcomes that are contrary to separate regulatory processes and the public interest.

Council will ensure that negotiation and formation of any Planning Agreement will be undertaken in accordance with any then current **Probity Policy** that may apply.

In certain circumstances, Council may decide to implement a Probity Policy specific to the negotiation of a particular Planning Agreement.

### 8.2 Public notification

A Planning Agreement cannot be entered into, amended or revoked unless there has been public notification of the proposed Planning Agreement for a period of **at** twenty eight (28) days, as required under s7.5(1) of the EP & A Act.

The public notification of a Planning Agreement will be carried out as follows:

- (1) Where Council supports exhibition of the draft Planning Agreement, it will publicly exhibit the Development Application and / or proposed instrument and the Planning Agreement in accordance with the Act and its notification requirements and seek public submissions.
- (2) Council will publicly re-notify and make available for public inspection a proposed Planning Agreement and the application to which it relates if, in Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the Planning Agreement or the application, or their formal consideration by Council, or for any other reason.
- (3) Public submissions to Planning Agreement notifications will be assessed by Council in accordance with its **Community Engagement Tool Kit**.

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### 8.3 Explanatory note

- (1) An Explanatory Note will be exhibited in conjunction with the exhibition of a draft Planning Agreement, as per the requirements of clause 25E(1) of the Regulation. An Explanatory Note must contain the following:
  - (a) A summary of the objectives, nature and effect of the proposed agreement, amendment or revocation.
  - (b) 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.
- (2) The Explanatory Note must:
  - (a) identify how the Planning Agreement, amendment or revocation promotes the public interest and one or more of the objects of the Act;
  - (b) identify how the Planning Agreement, amendment or revocation promotes one or more of the Guiding Principles for Councils under section 8 of the *Local Government Act 1993* (NSW);
  - (c) identify a planning purpose or purposes served by the Planning Agreement, amendment or revocation, and contain an assessment of whether it provides for a reasonable means of achieving that purpose;
  - (d) identify whether the Planning Agreement, amendment or revocation conforms to Council's capital works program; and
  - (e) state whether the Planning Agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.
- (3) The Explanatory Note will be prepared in consultation with the other parties proposing to enter into the Planning Agreement.

### 8.4 Preparation of the Planning Agreement

Council's Planning Agreement Template is attached to this Policy.

Unless otherwise specified in this Policy, the Planning Agreement Template is to be used as a basis for any Planning Agreement where possible, but, with the exception of the clauses specified below, it is not compulsory for all of the provisions in that template to be used and it will be adapted to each development as appropriate.

Council will generally not agree to amend the following clauses in the Planning Agreement Template (as applicable to each development):

- (1) Completion of Works (clause 8).
- (2) Defects Liability (clause 9).
- (3) Registration (clause 14).
- (4) Assignment (clause 15).
- (5) Dispute Resolution (Clause 16).

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- (6) Breach (clause 18).
- (7) Termination, Rescission or Determination (clause 19).
- (8) Legal costs (clause 23.2).

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

### 8.5 Timing of a Planning Agreement – Instrument Change

Council will usually require a Planning Agreement in relation to a SEPP or LEP to be entered into before Council submits the relevant draft SEPP or LEP amendment to the Secretary .

### 8.6 Provision of security under a Planning Agreement

- (1) Council must require a Planning Agreement to make provision for adequate security to cover the Developer's obligations under the agreement. In a general sense, adequate security is security which is sufficient to allow Council to either:
  - (a) the need for the relevant material public benefit is not generated until that material public benefit is provided (i.e. by withholding the issue of a subdivision certificate); or
  - (b) allowing Council to immediately take steps to ensure that the relevant material public benefit is available to meet the need generated by the Development (i.e. by way of a bank guarantee that can be immediately called upon by Council).
- (2) The form of security may include, but is not limited to one (1) or more of the following:
  - (a) Provision of an unconditional bond or bank guarantee from an Australian bank in favour of Council to the full value of the contributions to be provided under the Planning Agreement (including in respect of any works and defects for works) on terms otherwise acceptable to Council.
  - (b) The ability for Council to withhold issuing a construction certificate, occupation certificate and/or subdivision certificate until the Developer has fulfilled some or all of its obligations under the Planning Agreement.
  - (c) The ability for Council to step-in and complete works where the Developer fails to complete them within a specified time.
  - (d) Where the Development Contributions include the dedication of land to Council, a right for Council to:
    - (i) compulsorily acquire the relevant land in the event the Developer fails to dedicate it to Council by the time required under the Planning Agreement; and/or
    - (ii) register a caveat on the title of the relevant land until such time as it is dedicated to Council.
- (3) Council will only accept a personal guarantee, or a parent company/corporate guarantee as security for the obligations of the Developer under a Planning Agreement in addition to other forms of security specified above.

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- (4) Council will not accept Insurance Bonds in lieu of Bank Guarantees under a Planning Agreement.
- (5) Council will not accept registration of a Planning Agreement on the title of the land to which the Planning Agreement applies in lieu of other forms of security referred to above.
- (6) If a Bank Guarantee is required to be provided to secure the provision of works, Council may require that Bank Guarantee to be provided in an amount which exceeds the agreed value of the works as set out in the Planning Agreement. The basis for that is that the works may not be provided for some time after the Planning Agreement is entered into, and the actual cost of providing those works may greatly exceed the estimated value as set out in the Planning Agreement.

### 8.7 Registration of Planning Agreements

Council will require a Planning Agreement to contain a provision requiring the Developer to agree to registration of the Planning Agreement pursuant to s7.6 of the EP & A Act.

On execution of the Planning Agreement and until it is registered on title, the developer may be required to consent to Council lodging a caveat on the title of the relevant land.

The Developer must provide Council with all the necessary documents required to facilitate the registration of the Planning Agreement on the title to the land, including the written consent of any parties with interests in the land.

### 8.8 Works

Where works are to be provided under a Planning Agreement, the Planning Agreement will specify:

- (1) the design process required to be followed in respect of the works (if any), including a requirement for Council to approve any such design where appropriate;
- (2) the timing for completion of the works;
- (3) the standard of the works; and
- (4) rectification of defects in respect of the works,

as generally included in Council's Planning Agreement Template.

### 8.9 Dispute resolution

A Planning Agreement must have a dispute resolution mechanism pursuant to s7.4(3)(f) of the EP & A Act.

The dispute resolution mechanism set out in Council's Planning Agreement Template is Council's preferred position with respect to dispute resolution under a Planning Agreement.

### 8.10 Value of Public Benefits under a Planning Agreement

The value of a benefit proposed under a Planning Agreement will be determined prior to the Planning Agreement being publicly notified.

If a Development Contribution under a Planning Agreement is the carrying out of works for a public purpose, Council may value the particular Development Contribution on the basis of a cost

**Liverpool City Council  
Planning Agreements Policy**

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estimate for the works. This may be prepared by a suitably qualified quantity surveyor or a valuer (as the case may be) appointed by Council and paid for by the Developer.

Where the Development Contribution under a Planning Agreement includes the dedication of land and the value of that land is to be taken into account, Council may seek the services of an appropriately qualified land valuer, as appointed by Council and at the cost of the Developer, in order to value the land being dedicated.

In the event that a Planning Agreement proposes works and services that would normally be provided as a condition of Development Consent, then those works and services will be deemed to have no value under the particular Planning Agreement.

The value specified for any Development Contribution that comprises works under a Planning Agreement (including security to be provided for those works) is to be indexed quarterly in accordance with the Construction Industry Producer Output Price Index (Non-Residential Construction – Sydney).

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**Liverpool City Council  
Planning Agreements Policy**

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**AUTHORISED BY**

Council Resolution

**EFFECTIVE FROM**

27 Feb 2019

**DEPARTMENT RESPONSIBLE**

City Economy &amp; Growth (Infrastructure Planning)

**REVIEW DATE**

27 Feb 2019

**VERSIONS**

Version	Amended by	Changes made	Date	TRIM Number
1	Not applicable	Adopted by Council	27 Feb 2019	089694.2016-012

**THIS POLICY HAS BEEN DEVELOPED IN CONSULTATION WITH**

Corporate Services (Governance and Legal Services)

City Economy &amp; Growth (Development Assessment)

**REFERENCES**

Liverpool City Council: Code of Conduct

Liverpool City Council: Community Engagement Policy

Liverpool City Council: Growing Liverpool 2023 – Liverpool City Council

Community

Strategic Plan

**ATTACHMENTS**

Schedule 1 – Guide for Council staff

**Liverpool City Council  
Planning Agreements Policy**

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**Attachment A**



**PLANNING AGREEMENT POLICY  
PROCEDURES**



## Liverpool City Council Planning Agreements Policy

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### Schedule 1 Guide for Council staff

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#### 1 Purpose of this Schedule

This procedure is intended to guide Council staff in negotiating Planning Agreements.

#### 2 Steps in the negotiation process

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

- 2.1 Council and the Developer (and any other relevant person) will decide whether to negotiate a Planning Agreement. In some cases, there may be a land use strategy for a locality, which will inform the preparation of the Planning Agreement.
- 2.2 Council officers do not need to report the matter to the elected Council prior to commencing negotiation of a Planning Agreement.
- 2.3 Council should ensure that both it and the Developer appoint a person to represent them in the negotiation of the Planning Agreement. Council should ensure that it appoints a third person to attend and take minutes of all negotiations.
- 2.4 There will be internal consultation between all of the relevant Departments within Council who may have an interest in the Planning Agreement or anything arising from it.
- 2.5 Council should seek legal advice on any Planning Agreement at the commencement of negotiations, even if Council undertakes initial negotiations itself, without its Solicitor present.
- 2.6 A timetable for negotiations and the protocols and work practices governing their negotiations should be agreed between the parties.
- 2.7 The key issues for negotiation will be identified by the parties, and the negotiations over these issues will take place. In particular, Council should seek to reach agreement with the Developer as to:
  - (1) the nature and extent of the Development Contributions to be provided by the Developer under the Planning Agreement;
  - (2) the estimated value of those Development Contributions;
  - (3) the time by which each of the Development Contributions should be provided;
  - (4) whether the Planning Agreement will exclude, in whole or in part, the application of s7.11 and/or s7.12 of the E P & A Act to the Development; and
  - (5) the nature and extent of the Development to which the Planning Agreement will apply.
- 2.8 If agreement is reached, the Developer should prepare and submit a proposed Planning Agreement in accordance with this Policy and the appropriate Planning Agreement template adopted by Council from time to time.
- 2.9 The parties should undertake further negotiation on the specific terms of the proposed Planning Agreement as necessary.
- 2.10 Once agreement is reached on the terms of the proposed Planning Agreement:

## Liverpool City Council Planning Agreements Policy

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- (1) Council should prepare the Explanatory Note in consultation with the Developer; and
  - (2) the Developer should make a written irrevocable offer to Council to enter into the Planning Agreement (a copy of which should accompany the offer).
- 2.11 Subject to any direction of the Minister for Planning and decision of any local planning panel constituted under the EP & A Act., Council may then proceed to adopt any of the processes available to it with respect to deciding to proceed, or not to proceed, with the proposed Planning Agreement. Ideally, that process will include the submission of a report to the elected Council with a recommendation to either:
- (1) proceed with the exhibition of the proposed Planning Agreement; or
  - (2) to proceed no further with the proposed Planning Agreement,
- 2.12 Where Council supports exhibition of the proposed Planning Agreement, it will publicly exhibit the proposed Planning Agreement in accordance with the EP & A Act and its notification requirements.
- 2.13 Once the exhibition of the proposed Planning Agreement has been undertaken the proposed Planning Agreement should be reported to the elected Council in order to:
- (1) consider any public submissions made with respect to the proposed Planning Agreement; and
  - (2) resolve whether or not to accept the offer made by the Developer to enter into the Planning Agreement.
- 2.14 Council may negotiate further changes to the Planning Agreement having regard to any matters raised following public notification and exhibition. If any changes are made to the proposed Planning Agreement after it has been publicly exhibited then the amended Planning Agreement will need to be placed back on public exhibition and the process in Sections 2.11 to 2.13 will need to again be followed with respect to that amended Planning Agreement.
- 2.15 Council may approve the application and set out the conditions for the agreement or, if an agreement has been executed, set out in the consent the terms of the agreement.
- 3 Inter-relationship between a Development Application/Instrument Change and a Planning Agreement**
- 3.1 Under the EP & A Act a Planning Agreement may only be entered into in relation to either:
- (1) an application for Development Consent; or
  - (2) an Instrument Change.
- 3.2 Ideally a Planning Agreement which relates to a Development Application:
- (1) will be proposed and negotiated prior to the determination of the Development Application;
  - (2) publicly exhibited simultaneously with the public exhibition of the relevant Development Application; and
  - (3) resolved to be entered into by Council at the same time that the relevant Development Application is determined.

## Liverpool City Council Planning Agreements Policy

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- 3.3 Council may impose a condition of Development Consent requiring the Developer to enter into the Planning Agreement in the form offered by the Developer prior to the determination of the Development Consent.

In that regard, s7.7 of the EP & A Act states as follows:

- 7.7 *Circumstances in which [planning agreements](#) can or cannot be required to be made*
- (1) *A provision of an [environmental planning instrument](#) (being a provision made after the commencement of this section):*
- (a) *that expressly requires a [planning agreement](#) to be entered into before a [development application](#) can be made, considered or determined, or*
- (b) *that expressly prevents a [development consent](#) from being granted or having effect unless or until a [planning agreement](#) is entered into,*  
*has no effect.*
- (2) *A [consent authority](#) cannot refuse to grant [development consent](#) on the ground that a [planning agreement](#) has not been entered into in relation to the proposed [development](#) or that the developer has not offered to enter into such an agreement.*
- (3) *However, a [consent authority](#) can require a [planning agreement](#) to be entered into as a condition of a [development consent](#), but only if it requires a [planning agreement](#) that is in the terms of an offer made by the developer in connection with:*
- (a) *the [development application](#), or*
- (b) *a change to an [environmental planning instrument](#) sought by the developer for the purposes of making the [development application](#),*  
*or that is in the terms of a commitment made by the [proponent](#) in a statement of commitments made under Part 3A.*

- 3.4 Council is still able to negotiate and enter into a Planning Agreement after a Development Consent has been granted, provided that the relevant Planning Agreement relates to the Development permitted under that application.
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# Voluntary Planning Agreement (VPA) Policy

Adopted : ### 2026

TRIM : 136500.2026



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## 1. Introduction

### 1.1 Purpose of this Policy

The purpose of this Policy is to establish a clear, transparent and consistent framework for the use of Voluntary Planning Agreements (VPAs) by Liverpool City Council (Council). It supports the strategic planning objectives of the Council and facilitates the delivery of public benefits that respond to the impacts of development.

This Policy guides how Council will consider, negotiate, prepare, and execute Planning Agreements under the legislative framework provided by:

- Part 7, Division 7.1 of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**).
- Part 9, Division 1 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**the Regulation**); and
- the *NSW Planning Agreements Practice Note (2025)* published by the Department of Planning, Housing and Infrastructure on the NSW Planning Portal (**the Practice Note**).

The Policy ensures that Planning Agreements are used to deliver infrastructure, services, and other public benefits in a manner that is fair, consistent, accountable, and in the public interest. It enables Council to accept offers from developers or landowners to provide contributions through monetary payments, dedication of land, works-in-kind, or other material public benefits, in connection with planning proposals, development applications, or modifications.

Planning Agreements entered into under this Policy are intended to complement, not replace or reduce, the development contributions otherwise required under sections 7.11 or 7.12 of the Act unless specifically agreed to and justified in accordance with this Policy.

### 1.2 Application of the Policy and Commencement

This Policy applies to all Planning Agreements that Council may negotiate, enter into, or administer under Division 7.1 of the Act.

It applies to Planning Agreements associated with a range of planning and development scenarios, including but not limited to:

- Planning proposals that seek amendments to the Liverpool Local Environmental Plan 2008 (**LEP**);
- Development applications (DAs) that generate demand for additional public infrastructure or services beyond standard development contributions;
- Modification applications under sections 4.55 or 4.56 of the Act, where changes to approved development may warrant a new or amended Planning Agreement;
- State-led rezonings or major infrastructure projects, where local government participation is required to secure local infrastructure or community benefits;
- Biodiversity offsetting mechanisms linked to planning proposals or development assessments;
- Prescribing future development standards or inclusions as part of an agreed planning outcome.

Planning agreements under this Policy may also be used to:

- Compensate for the loss or damage caused by development;
- Meet increased demand for public services and infrastructure resulting from development;
- Provide broader community benefits, including affordable housing, cultural or civic facilities, and public domain enhancements;
- Secure recurrent funding or ongoing maintenance arrangements for infrastructure or services delivered under the agreement;
- Support biodiversity offsetting or environmental management measures linked to development;
- Prescribe specific outcomes or inclusions in future development to ensure alignment with planning objectives;
- Facilitate innovative or site-specific infrastructure solutions that deliver planning benefits not achievable through standard contributions;
- Secure road maintenance funding for the existing rural road network within the Aerotropolis Precinct to address wear and deterioration caused by construction traffic associated with development activities.

This Policy applies to:

- Council officers involved in the assessment, negotiation, and administration of planning agreements;
- Elected Councillors, in their role in considering and determining planning matters related to Planning Agreements;
- Consultants and legal advisors acting on behalf of Council, developers, or landowners;
- Developers and landowners proposing or entering into a planning agreement with Council.

The Policy takes effect upon adoption by Council's resolution on ### 2026 and applies to all planning agreements initiated or negotiated thereafter. It will be reviewed periodically to ensure alignment with legislative requirements, strategic priorities, and evolving best practice.

### 1.3 Legal and Regulatory Framework

This Policy is guided by the legislative framework established under NSW planning law. Council must comply with the following statutory instruments when entering into a Planning Agreement:

#### 1.3.1 Statutory Legislation and instruments

- **The Act** – in particular Division 7.1 which provides the statutory basis for councils to enter into planning agreements in connection with planning proposals, development applications, and modification applications.
- **The Regulation** sets out procedural requirements for the form, exhibition, execution, and registration of planning agreements,
- **Ministerial Directions on Planning Agreements** - Pursuant to s7.9 of The Act which may set out directions relating to the procedures to be followed, the publication of those procedures, the method determining the extent of public benefits and other standard requirements for planning agreements. There is currently only one such direction being the Environmental Planning and Assessment (Planning Agreements) Direction 2019 (2019

Ministerial Direction).

### 1.3.2 Council's Adopted Policy Frameworks and Principles

In addition to legislative requirements, Council has chosen to apply the following frameworks and guidance in the preparation and assessment of planning agreements:

- **The 2025 Practice Note**

A best practice guide issued by the NSW Department of Planning, Housing and Infrastructure that promotes transparency, probity, and consistency in the negotiation and execution of planning agreements. Pursuant to clause 203(7) of the Regulation, Council must consider any relevant practice notes issued by the Planning Secretary when negotiating or entering into a planning agreement and when preparing an explanatory note.

- **Liverpool Contributions Plans (Sections 7.11 and 7.12 of the Act)**

Establish the basis for levying development contributions towards local infrastructure. Planning Agreements are not intended to replace these contributions but to supplement them where additional or alternative public benefits are proposed.

Whilst Council must consider the Practice Note, it is not legally bound to follow the Practice Note. Council will consider and be guided by the Practice Note. If there is any inconsistency between the Practice Note and this Policy, Council will be guided by this Policy.

Council is committed to ensuring that all planning agreements are prepared in accordance with this framework, are assessed on their individual merits, and promote outcomes that are lawful, transparent, and in the public interest.

### 1.4 Relationship to Council's Strategic Planning Documents

This Policy supports and reinforces the implementation of Council's strategic land use and infrastructure planning framework. Planning Agreements must align with Council's adopted plans and policies to ensure development delivers infrastructure and services consistent with local priorities and community expectations.

Planning agreements made under this Policy must be consistent with, and contribute to the implementation of, the following strategic planning documents and instruments:

- **Community Strategic Plan** – Establishes long-term goals for the Liverpool community and provides the overarching vision for Council's planning and service delivery.
- **Local Strategic Planning Statement (LSPS)** – Articulates Council's land use vision and sets planning priorities for housing, infrastructure, environment, and economic development (Connected Liverpool 2040)
- **Liverpool Land Use Strategies**
- **the LEP** – Provides the statutory land use planning framework, including zoning, development standards, and land use controls.
- **Development Control Plans (DCPs)** – Provide detailed planning, design, and infrastructure guidance to support the implementation of the LEP.

- **State Environmental Planning Policies (SEPPs)** –the Western Sydney Aerotropolis. Apply to specific planning issues or regions and may override local controls. Planning agreements must not be inconsistent with applicable SEPPs, including those relating to infrastructure, housing, biodiversity, and
- **Infrastructure Contributions Plans (Sections 7.11 and 7.12)** – Establish the infrastructure and services required to support growth and the basis for development contributions.

Planning agreements should also support the objectives of relevant regional and district planning strategies, including the Western City District Plan and Greater Sydney Region Plan, and must not undermine any adopted State or Commonwealth policies or infrastructure plans.

Council will not enter into a planning agreement that compromises the achievement of these strategic outcomes or the integrity of the statutory planning framework.

### 1.5 Principles of this Policy

Council applies the following principles in the consideration, negotiation, and administration of planning agreements to ensure that they are fair, transparent, and in the public interest:

1. **Public Interest**  
Planning agreements must promote outcomes that are consistent with the objects of the Act and deliver clear public benefits that would not otherwise be achieved through standard development contributions.
2. **Transparency and Accountability**  
The planning agreement process must be open and transparent. All planning agreements and supporting documentation (including valuations and explanatory notes) will be publicly exhibited and reported to Council in accordance with legislation and this Policy.
3. **Fairness and Equity**  
The negotiation and implementation of planning agreements must be fair and consistent. Developers offering similar developments under similar circumstances should be treated equitably.
4. **Consistency with Strategic Planning**  
Planning agreements must align with Council's adopted strategic planning framework, including the LSPS, LEP, Community Strategic Plan, and relevant SEPPs and DCPs.
5. **No Improper Influence**  
The negotiation and assessment of planning agreements must be kept separate from the planning assessment process. Planning Agreements must not improperly influence decision-making on planning proposals or development applications.
6. **Value for the Community**  
Contributions must reflect an appropriate value relative to the impact or uplift resulting from the development. Where applicable, independent valuation of public benefits is required to ensure outcomes are proportionate and reasonable.
7. **Probity and Ethical Conduct**

All parties involved in the Planning Agreement process—including Council staff, elected officials, and external consultants—must act with integrity, avoid conflicts of interest, and comply with applicable codes of conduct and governance frameworks.

## 8. Flexibility and Innovation

Planning agreements should allow for innovative solutions and a broad range of contribution types, provided they meet the public interest test and support infrastructure and service delivery in a way that complements existing contribution plans.

## 1.6 Definitions and Key Terms

The following terms used throughout this Policy (whether or not capitalised) have the meaning given to them here. Where not defined below, terms have the meaning given to them in the Act, the Regulation or any relevant planning instruments.

- **Act** – the Environmental Planning and Assessment Act 1979 (NSW)
- **Agreement or Planning Agreement** – A Voluntary Planning Agreement entered into by Council and a developer or landowner under Division 7.1 of the Act.
- **CC (Construction Certificate)** – A certificate issued under Section 6.8 of the Act, certifying that building work completed in accordance with specified plans and specifications or standards are consistent with the development consent and comply with the Building Code of Australia and relevant standards, and other requirements of the regulations under the Act. A CC is required before building work may commence.
- **Contribution** – Any monetary payment, dedication of land free of cost, provision of a material public benefit, works-in-kind, or any combination thereof to be used for a public purpose made by a developer under a planning agreement.
- **Council** – Liverpool City Council.
- **DA (Development Application)** – An application for consent to carry out development under Part 4 of the Act.
- **Developer** – A person or entity (including landowners or their representatives) who has made, or proposes to make, a development application or planning proposal.
- **Explanatory Note** – A written note required under section 205 of the Regulation that explains the objectives, nature, and intended effect of a planning agreement and its relationship to the relevant development and contains an assessment of the merits of the proposed agreement, including the positive and negative impacts on the public or a relevant section of the public.
- **Infrastructure Needs Assessment** - Means an assessment that identifies the additional infrastructure required as a result of a proposed development and demonstrates the relationship between the development and that infrastructure.
- **Landowner** means name of registered proprietor of the land under the *Real Property Act 1900 (NSW)*

- **Material Public Benefit** – A benefit provided by a developer under a planning agreement, other than the dedication of land or monetary contributions, that provides a measurable public good or service.
- **Net Community Benefit** – The overall positive outcome for the community, having regard to public benefit, environmental outcomes, strategic alignment, and development impacts.
- **OC (Occupation Certificate)** – A certificate issued under section 6.9 of the Act that authorises the occupation or use of a building or part of a building. It certifies that the building is suitable for occupation and complies with the development consent and construction certificate.
- **Practice Note** – a practice note which is issued by the Planning Secretary pursuant to section 203(6) of the Regulation to assist parties to prepare planning agreements, including but not limited to the 2025 Practice Note, as replaced or amended from time to time.
- **Public Benefit** - A tangible, measurable advantage provided to the community under a planning agreement. Public benefits may include monetary contributions, land, infrastructure, services, facilities, or other works that support the public interest and align with Council's strategic planning objectives.
- **Regulation** – the *Environmental Planning and Assessment Regulation 2021 (NSW)*
- **SC (Subdivision Certificate)** – A certificate issued under section 6.15 of the Act, certifying that all conditions of development consent for a subdivision have been met. It enables registration of a subdivision plan with NSW Land Registry Services.
- **Section 7.11 / Section 7.12 Contributions** – Contributions levied under section 7.11 or 7.12 of the Act for public amenities and services to meet development demand.
- **SWC (Subdivision Works Certificate)** – A certificate issued under section 6.8 of the Act (defined further in the Regulation), authorising subdivision works to commence. It certifies that engineering design documentation complies with the development consent.
- **VPA** – Voluntary Planning Agreement. The abbreviation used interchangeably with “planning agreement” throughout this Policy.

## 2. Objectives of the Policy

### 2.1 Ensuring Transparent and Fair Planning Agreements

One of the key objectives of this Policy is to ensure that all planning agreements are negotiated, assessed, and executed in a manner that is transparent, consistent, and fair to all parties, and in particular, to the broader community.

To achieve this, the Policy seeks to:

- Ensure that planning agreements are subject to open and transparent processes, including public exhibition, access to explanatory notes, and clear reporting to Council;
- Promote accountability and public confidence in how planning benefits are negotiated and delivered;
- Apply consistent procedures and assessment criteria across all planning agreements, avoiding preferential or ad hoc treatment;

- Require that the value and nature of public benefits are clearly identified, independently assessed where appropriate, and aligned with the impacts of the proposed development;
- Provide clear roles, responsibilities, and governance frameworks to avoid conflicts of interest and ensure probity throughout the planning agreement process.

This objective aligns with the principles set out in the 2025 Practice Note and 2019 Ministerial Direction and the expectations of the community for fair and equitable planning outcomes.

## 2.2 Promoting Infrastructure Delivery

This Policy aims to facilitate the timely and coordinated delivery of public infrastructure that supports new development and responds to the needs of Liverpool's growing community.

Planning agreements offer an opportunity to:

- Deliver infrastructure and public domain improvements aligned with the staging of development;
- Support the acceleration or enhancement of infrastructure where existing contributions frameworks may not be sufficient or timely;
- Provide site-specific or place-based solutions, including transport, stormwater, open space, cultural, and community facilities;
- Integrate development with Council's infrastructure priorities as outlined in the Community Strategic Plan, Delivery Program, and Local Strategic Planning Statement;
- Secure works-in-kind or land dedication that addresses local infrastructure gaps, particularly in areas affected by significant growth, such as the Western Sydney Aerotropolis;
- Enable co-investment or leverage opportunities where developers can partner with Council to deliver infrastructure of broader community benefit.

By promoting the use of planning agreements for infrastructure outcomes, Council seeks to ensure that development is sustainable, supported by appropriate services, and contributes to the liveability and functionality of new and existing communities.

## 2.3 Aligning with the Community and Public Interest

This Policy ensures that planning agreements contribute to outcomes that reflect the needs, values, and expectations of the Liverpool community. All planning agreements must be assessed against the principle of delivering a net community benefit and serving the public interest, as required under the Act and related guidance.

To achieve this, planning agreements should:

- Deliver benefits that respond to the demands created by development and the aspirations of the local community;
- Provide infrastructure, services, or facilities that are genuinely additional to what is required under standard development contributions;
- Reflect Council's adopted planning priorities, including affordable housing, environmental sustainability, resilience, accessibility, and community well-being;

- Promote social equity, ensuring that contributions respond to diverse community needs and are distributed fairly across the local government area;
- Be transparent in how the public interest is assessed and documented, including through the explanatory note and valuation of public benefits;
- Be clearly distinguished from any private benefit to the developer or landowner.

In assessing whether a planning agreement aligns with the public interest, Council will consider whether the proposal:

- Is consistent with Council's strategic planning framework;
- Provides public benefits that are measurable, enforceable, and reasonably related to the impact of the development;
- Has been developed through a transparent and consultative process.

## 2.4 Expanding the Scope of Development Contributions

Planning agreements provide Council with a flexible mechanism to secure a broader and more diverse range of public benefits than those typically available through standard development contributions under sections 7.11 and 7.12 of the Act.

Through a planning agreement, Council may accept contributions that:

- Address planning priorities or infrastructure needs not captured in existing contributions plans;
- Enable delivery of non-traditional or community-enhancing benefits, such as affordable housing (subject to considering the 2019 Ministerial Direction), biodiversity conservation, digital infrastructure, or cultural assets;
- Support site-specific solutions, tailored to the local impacts or opportunities of a particular development;
- Facilitate place-based innovation or pilot programs that improve resilience, amenity, or sustainability;
- Allow voluntary over-contributions or developer-initiated public benefits that complement Council's strategic goals;
- Promote co-investment models, where infrastructure is jointly delivered or funded through a planning agreement alongside public investment.

These expanded contributions are subject to clear valuation, probity, and public interest requirements as set out in this Policy and relevant legislation.

Planning agreements must not be used to reduce or substitute required s7.11 or s7.12 contributions unless explicitly justified and approved through Council's standard procedures.

## 2.5 Encouraging Developer Participation in Infrastructure Planning

Council encourages early and proactive engagement from developers to explore the use of planning agreements as a means to deliver infrastructure and public benefits aligned with Liverpool's strategic planning objectives.

Planning agreements provide an opportunity for developers to:

- Support the delivery of infrastructure in line with development staging;
- Propose site-specific or innovative public benefits that exceed standard requirements;
- Collaborate with Council to address infrastructure needs in growth areas;
- Contribute to place-based outcomes that enhance both development feasibility and community value.

While voluntary, planning agreements are particularly encouraged where a development:

- Seeks a change to planning controls;
- Generates impacts beyond what is addressed by existing contributions plans;
- Involves large-scale or strategically significant proposals.

Early discussions with Council, ideally during pre-lodgement or concept stages, help align development proposals with local infrastructure priorities and community expectations.

### 3. Circumstances for Entering into a Planning Agreement

#### 3.1 When a Planning Agreement would generally be expected

Under Division 7.1 of the Act, planning agreements are voluntary. However, Council would generally expect the submission and negotiation of a planning agreement in connection with certain development proposals where public benefits are needed to address impacts or deliver strategic outcomes.

Council will generally expect a planning agreement to be offered were, but not limited to the following:

- A planning proposal seeks to amend the LEP particularly where the proposal results in increased development potential (e.g. uplift in density, height, or land use intensity);
- A development application generates a level of impact or need for infrastructure or public benefits that is not fully addressed by existing contributions plans (e.g. section 7.11 or 7.12);
- A modification application under s4.55 or s4.56 of the Act results in a substantial change to the approved development and its associated impacts.
- A proposal forms part of a state-led rezoning or strategic precinct (e.g. the Western Sydney Aerotropolis) requiring local infrastructure coordination and delivery.
- Proposals that seek site-specific planning outcomes not otherwise permitted under current planning controls, and which require negotiated infrastructure delivery or other public benefits to mitigate impacts or achieve strategic planning objectives.

In such cases, Council considers that a planning agreement would likely be the appropriate method to enable appropriate public benefits to be provided to support the planning proposal, development application, or modification application.

#### 3.2 Situations Where a Planning Agreement May Be Considered

Planning agreements may be considered in a range of development scenarios where they can provide infrastructure, services, or public benefits aligned with Council's planning objectives.

Situations where a planning agreement may be appropriate include, but not limited to the following:

- Development proposals that generate cumulative impacts on local infrastructure or services, particularly in areas experiencing rapid growth or staging issues;
- Proposals involving high-density or mixed-use development, where additional open space, streetscape, or social infrastructure may be needed;
- Voluntary developer offers to provide enhanced public benefits beyond standard requirements (e.g. through early delivery, greater scope, or innovative outcomes);
- Proposals where Council seeks to coordinate infrastructure delivery across multiple sites or landowners through negotiated contributions;
- Developments in rural, transition, or greenfield areas where infrastructure is limited and standard contributions under s7.11 or s7.12 are insufficient to support community needs.

Situations where a site-specific planning solution or variation from development controls is sought, and public benefit is necessary to justify the variation.

Council encourages the use of planning agreements where they can secure public value, improve development outcomes, or align delivery timing with community needs.

### 3.3 Planning Agreements and Development Contributions (s7.11 & s7.12)

Planning agreements are distinct from, and do not automatically replace, development contributions required under sections 7.11 and 7.12 of the Act.

Council will generally require that:

- Section 7.11 or 7.12 contributions continue to apply, in accordance with Council's adopted contributions plans; and
- Planning agreements provide additional or alternative public benefits, over and above what would ordinarily be required through standard contributions plan.

However, Council may consider a planning agreement in substitution for part or all a s7.11 or s7.12 contribution, where:

- The proposed works or public benefits are equivalent or superior in value and purpose;
- The substitution is clearly identified and justified in the agreement and supporting documentation;
- The arrangement is consistent with the relevant Contributions Plan and aligned with Council's infrastructure delivery priority within the border precinct planning framework.
- The substitution has been subject to independent valuation and assessment.

Council may determine whether monetary contributions or material public benefits are appropriate in each case, having regard to infrastructure needs, delivery timing, and consistency with broader precinct planning objectives. Council will not support planning agreements that seek to reduce or replace development contributions without a clearly demonstrated and justified public benefit.

Planning agreements may also be used to supplement standard contributions where infrastructure demands exceed what is anticipated under existing plans.

### 3.4 Types of Contributions Accepted Under Planning Agreements

Planning agreements may include a wide range of contribution types, provided they deliver a genuine and enforceable public benefit, are consistent with Council's strategic objectives, and comply with relevant legislation and this Policy.

Council may accept any of the following contributions under a planning agreement:

- Monetary contributions – Payments made by the developer to fund public infrastructure, services, or facilities.
- Works-in-kind – Infrastructure or public works delivered directly by the developer (e.g. roads, stormwater, open space, community facilities).
- Dedication of land free of cost– Transfer of land to Council for public purposes (e.g. parks, road corridors, drainage reserves, community or cultural uses).
- Material public benefits – Provision of goods, services, or works that deliver measurable benefits to the community, but which may not take the form of traditional infrastructure (e.g. public art, heritage restoration).
- Affordable housing contributions – Provision of land, dwellings, or monetary payments for affordable housing, subject to Council's applicable policies and consistency with the 2019 Ministerial Direction and under section 7.32 of the Act.
- Recurrent funding or maintenance arrangements – Where appropriate, Council may consider planning agreements that include ongoing funding or delivery of services to support new infrastructure or facilities.
- Biodiversity offsets – In limited cases, and subject to legal and policy alignment, contributions may include land or actions that offset environmental impacts.

## 4. Key Principles for Planning Agreements

### 4.1 Public Interest and Acceptability Test

Council will only enter into a planning agreement where it is satisfied that the proposal is in the public interest and meets the acceptability criteria established under this Policy,

Council does not seek Planning Agreements as a default contribution mechanism. Planning Agreements will only be pursued where they demonstrably provide a net community benefit or improved planning outcomes beyond those achievable under standard contributions plans.

A planning agreement will generally be considered to meet the broader public benefits and acceptability test where:

- The planning agreement delivers tangible, measurable, and enforceable public benefits;
- The public benefits are clearly linked to the planning proposal or development impacts, or provide strategic value aligned with Council's planning objectives;
- All contributions are supported by independent valuation, ensuring the scale and value of the benefits are appropriate, fair, and not exaggerated;
- The agreement does not undermine or substitute required s7.11 or s7.12 contributions unless explicitly agreed and justified;
- The process of negotiation and assessment has been free from improper influence, including:

- No direct involvement of elected Councillors or unauthorised Council staff in negotiation;
- Clear separation between the planning assessment and negotiation functions;
- Governance controls and, where applicable, a probity advisor are in place for high-value or complex agreements
- The proposed public benefits are consistent with the objectives of Council's strategic planning documents and priorities.

Council may refuse to support a planning agreement where these criteria are not met.

## 4.2 Net Community Benefit Principle

Planning agreements must deliver outcomes that provide a clear net community benefit. This means the benefits offered must not only respond to the impacts of the development but also result in an overall positive outcome for the broader community.

To satisfy this principle, a planning agreement should:

- Deliver infrastructure or services that enhance liveability, amenity, environmental sustainability, or social equity;
- Support strategic place-based outcomes identified in Council's planning instruments, such as the LSPS, Community Strategic Plan, or Western City District Plan;
- Demonstrate that the public benefits are measurable, enforceable, and secured in a way that reflects community expectations and planning priorities as well as the legislative requirements;
- Avoid creating or exacerbating inequities between different developments or local areas.

Council will assess whether a planning agreement delivers a net community benefit by considering the scale, timing, location, and type of benefits offered — and their alignment with both development impacts and strategic infrastructure needs.

Where a proposed planning agreement does not clearly demonstrate a net community benefit, it may not be supported by Council.

## 4.3 Probity, Governance, and Accountability

Council is committed to ensuring that all planning agreements are negotiated, assessed, and implemented in a manner that upholds the highest standards of probity, integrity, and accountability.

To achieve this, the following principles apply:

- Negotiations must be conducted only by Council officers with delegated authority. Elected Councillors and Council staff without formal authorisation must not participate directly in the negotiation of planning agreements.
- A clear separation must be maintained between the assessment of a planning proposal or development application and the negotiation of a planning agreement.
- Council may appoint an independent probity advisor for complex or high-value agreements to ensure transparency and procedural integrity subject CEO's direction

- The negotiation process must be documented and auditable, including records of meetings, draft offers, valuations, and decisions.
- Conflict of interest disclosures must be made and managed by all parties involved, including Council officers, consultants, and proponents.
- The draft planning agreements must be reported to and approved by Council, with all supporting documents made publicly available in accordance with legislative requirements.
- The implementation of planning agreements will be subject to oversight, compliance monitoring, and periodic review.

These requirements align with the 2025 Practice Note, Council's Code of Conduct, and Council's Probity Standard. They are critical to maintaining public confidence in the planning system and ensuring outcomes serve the community interest.

#### 4.4 Ensuring No Improper Influence on Planning Decisions

Planning Agreement must not be used to buy or sell development rights. The integrity of the planning system depends on decisions being made solely on planning merit and in accordance with applicable statutory and strategic frameworks.

To safeguard against undue influence and maintain public trust:

- **Planning Decisions Must Be Based on Merit**  
Council will not grant planning approval solely because public benefits are offered through a planning agreement. Development that is unacceptable on planning grounds will not be approved, regardless of any planning agreement offer. Council will not impose a condition of development consent requiring a planning agreement unless the developer has voluntarily made an offer to enter into a planning agreement in connection with the relevant development application or planning proposal. Council will not allow Planning Agreements to override environmental planning instruments, zoning controls, or statutory planning assessment processes.
- **Avoidance of Unreasonable Demands**  
Council must not impose excessive, unrelated, or disproportionate obligations on developers. All Planning Agreement contributions must be aligned with legitimate planning objectives.
- **Transparency in Decision-Making**  
Council will clearly document how each Planning Agreement aligns with its strategic planning priorities, including the Local Environmental Plan (LEP), Local Strategic Planning Statement (LSPS – *Connected Liverpool 2040*), relevant contributions plans, and supporting land use strategies. All decisions must be underpinned by transparent planning rationale.
- **Separation of Planning and Negotiation Functions**  
Council officers who assess planning proposals or development applications must not participate in the negotiation of a Planning Agreement for the same development. This ensures the independence of statutory planning assessment and protects against real or perceived conflicts of interest.

These safeguards ensure that Planning Agreements do not influence statutory decision-making and that planning outcomes are lawful, consistent, and in the public interest, in accordance with section 7.7(2) of the *Act* and relevant Ministerial Directions.

#### **4.5 Use of Planning Agreements Where No Relevant Contributions Plan Applies**

In precincts or land release areas where no applicable section 7.11 or 7.12 Contributions Plan is in place for the proposed development, Council may consider entering into a Voluntary Planning Agreement (Planning Agreement to secure appropriate infrastructure contributions).

Any such Planning Agreement must be supported by an Infrastructure Needs Assessment prepared by a suitably qualified consultant, that demonstrates the additional demand generated by the development, and the type, scale, and timing of infrastructure required to address that demand.

### **5. The Planning Agreement Negotiation Process**

The negotiation and preparation of a Planning Agreement must follow a structured, transparent, and accountable process. This ensures that all proposals are subject to appropriate review, reflect the public interest, and contribute to orderly and sustainable development outcomes. This section outlines the sequential stages in the negotiation, assessment, exhibition, and finalisation of Planning Agreement entered into by Council. It is designed to provide clarity for developers, the community, and Council staff, and to ensure consistency with legal requirements and best practice guidance from the NSW Government.

Where the developer is not the registered owner of the land to which the Planning Agreement applies, Council will ordinarily require the landowner to be a party to the Planning Agreement.

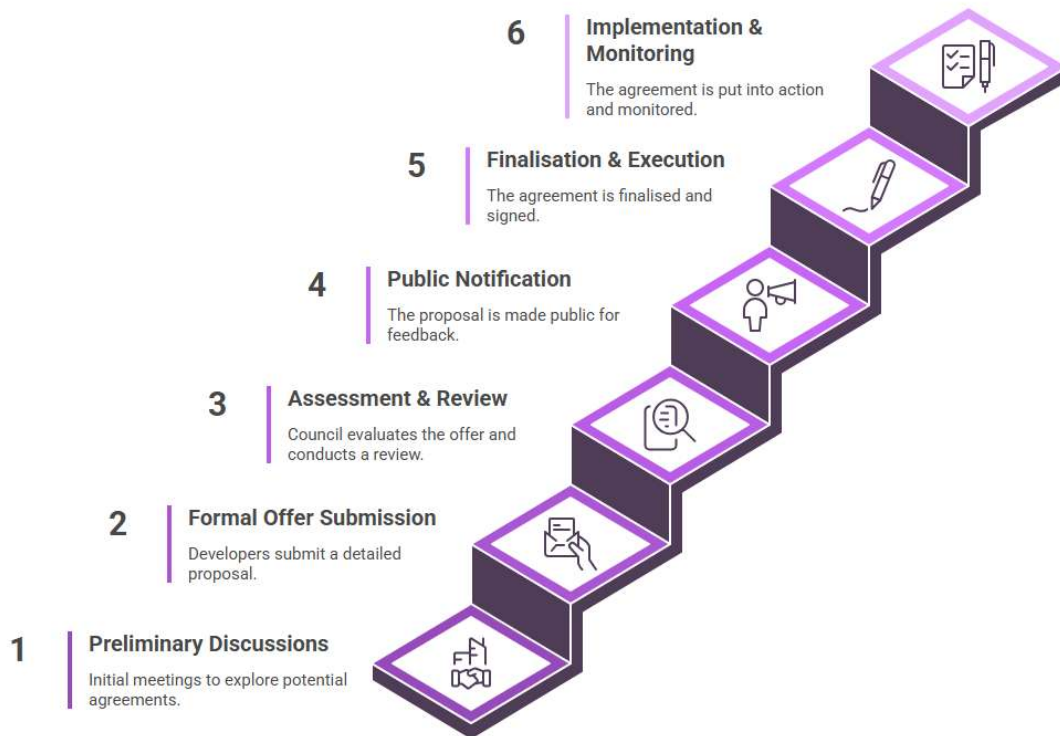
The landowner must be a party to the Planning Agreement where:

- The agreement includes an obligation to dedicate land to Council; and/or
- The agreement is required to be registered on title in accordance with the *Act*.

This ensures that land dedication obligations can be lawfully performed and that the dedication and registration obligations of the Planning Agreement can be properly secured and enforced.

This process map below illustrates the structured steps for negotiating, assessing, finalising, and implementing a VAP in accordance with this Policy.

## Voluntary Planning Agreement Process



### 5.1 Step 1: Preliminary Discussions

Prior to lodging a planning proposal or development application, developers are strongly encouraged to engage in early discussions with Council. These discussions aim to determine the appropriateness of a Planning Agreement, clarify Council's expectations, and identify the infrastructure demands arising from the proposed development.

Key objectives of this stage include:

- Identifying the likely need for a Planning Agreement**  
Council will advise whether a Planning Agreement is appropriate based on strategic planning priorities, existing contributions plans, and anticipated infrastructure needs that may not be addressed through conventional mechanisms.
- Requirement for an Infrastructure Needs Assessment**  
Developers must be prepared to assess and quantify the additional infrastructure or service demand their proposal generates. A formal Infrastructure Needs Assessment, prepared by a suitably qualified consultant, will be required to support any Planning Agreement offer. The assessment must identify infrastructure gaps not addressed by current contribution plans and substantiate the scope of public benefits proposed.

- **Preparation of a Preliminary Infrastructure Services Delivery Plan (ISDP)**  
Where physical infrastructure is proposed, Council will require submission of a Preliminary ISDP. This must:
  - Identify the scope of infrastructure to be delivered;
  - Provide a preliminary cost estimate of each infrastructure item;
  - Outline the proposed sequencing and timing of delivery;
  - Link delivery to relevant development triggers (e.g., CC, SWC, SC, OC and year).
- **Establishing Probity and Process Expectations**  
Council will outline its negotiation protocol, including clear delineation between assessment and negotiation roles, the engagement of independent valuation or probity experts (if required), and the documentation standards to be followed throughout the Planning Agreement process.

The level and detail of supporting documentation required will vary depending on the scale, nature and complexity of the proposal, and the determination of documentation requirements is at the sole discretion of Council.

These discussions are non-binding but are critical to ensuring Planning Agreement proposals are properly scoped, evidence-based, and capable of timely assessment.

## 5.2 Step 2: Formal Offer Submission

Following preliminary discussions, a developer may submit a formal offer to enter a Planning Agreement with Council. The formal offer must be made in writing, addressed to Council, signed by all proposed parties to the Planning Agreement (except Council), and accompanied by sufficient supporting documentation to enable Council to assess the merits, feasibility, and public benefit of the proposal.

The formal offer must include the following components:

### a) Development Context and Applicant Details

A description of the proposed development, including:

- Site location, land ownership, and relevant planning instruments;
- Development staging (if applicable);
- Associated planning proposal or development application;
- Identification of all parties to the proposed agreement, including the legal entity with responsibility for delivery.

### b) Infrastructure Needs Assessment

If required by the Council, a site-specific **Infrastructure Needs Assessment**, prepared by a suitably qualified consultant, identifying:

- The additional demand for infrastructure, services or facilities created by the development;
- The extent to which those demands are not addressed by existing Section 7.11 or 7.12 Contributions Plans;

- Justification for the proposed contributions or works-in-kind under the Planning Agreement;
- Any assumptions and planning parameters used in the analysis.

This assessment must form the basis of the scope and scale of the proposed public benefits offered in the Planning Agreement.

### **c) Preliminary Infrastructure Services Delivery Plan (ISDP)**

If required by the Council, where the Planning Agreement involves the delivery of infrastructure or material public benefits, the offer must be supported by a **Preliminary ISDP**. The ISDP must:

- Identify the infrastructure items or works proposed to be delivered;
- Provide a preliminary cost estimate for each item (prepared or verified by a qualified cost consultant or quantity surveyor);
- Define the sequencing and indicative timing of infrastructure delivery;
- Link infrastructure delivery to relevant development triggers, such as the issue of a Construction Certificate (CC), Subdivision Works Certificate (SWC), Subdivision Certificate (SC), or Occupation Certificate (OC);
- Be consistent with the staging of development and anticipated community demand.

Council will not accept delivery triggers that are susceptible to strategic avoidance. Delivery must be sequenced in a manner that ensures infrastructure is provided in line with community need and does not impose premature maintenance obligations on Council.

### **d) Security Framework (Preliminary)**

The Planning Agreement offer must propose security arrangements consistent with the policy provisions set out below.

### **e) Draft Heads of Agreement or Outline of Proposed Terms**

A high-level outline or schedule of the key terms proposed in the planning agreement, including:

- The type and nature of contributions (monetary, land, works-in-kind, or other material public benefits);
- Any proposed offsets or substitution for Section 7.11 or 7.12 contributions;
- Delivery mechanisms and responsibilities.

### **g) Supporting Documentation**

Any additional documentation relevant to Council's assessment of the offer, including but not limited to:

- Staging plans;
- Architectural or engineering plans (where relevant to infrastructure scope);
- Feasibility analysis;
- Valuations or land dedication plans;
- Other material Council reasonably requires to inform its assessment.

### 5.3 Step 3: Assessment of Offer and Council Review

All formal Planning Agreement offers submitted to Council will be subject to a structured and rigorous assessment process to ensure alignment with statutory requirements, planning principles, and Council's strategic objectives. The review will be coordinated internally by relevant departments and, where appropriate, with advice from independent experts.

#### a) Internal Council Review

Council will assess each Planning Agreement offer having regard to:

- The planning merit and public interest of the proposal;
- Consistency with Council's strategic planning framework, including the Local Strategic Planning Statement (LSPS), Local Environmental Plan (LEP), Contributions Plans, and Community Strategic Plan;
- Alignment with the infrastructure needs identified through the **Infrastructure Needs Assessment** and the proposed sequencing outlined in the **Infrastructure Services Delivery Plan (ISDP)**;
- Whether the scope, scale and timing of proposed contributions are proportionate, feasible, and enforceable;
- Any probity risks or conflicts of interest.

Assessment will involve representatives from planning, infrastructure, legal, financial, and other relevant service units within Council. Officers involved in the assessment of planning proposals or development applications will not participate in negotiation of the Planning Agreement to maintain separation of roles and integrity of process.

#### b) Use of External Advisors

Where considered necessary, Council may engage or require the developer to engage, at their cost, suitably qualified independent consultants to assist with:

- Valuation of land, works, or material public benefits;
- Quantity surveying or cost verification of proposed infrastructure items;
- Legal review of Planning Agreement

Council will retain discretion over the selection or approval of any such advisor to ensure impartiality and the credibility of the review.

#### c) Acceptability Test

All planning agreement proposals will be subject to the **Acceptability Test** (refer to Section 11.2), which evaluates whether the proposal:

- Delivers a net community benefit;
- Is fair, reasonable, and transparent;
- Does not influence or prejudice the planning decision;

- Provides value and outcomes that would not otherwise be achieved through existing contributions mechanisms.

#### **d) Consideration of Security and Delivery Risks**

Council will assess the adequacy of the proposed **security framework** and infrastructure delivery triggers to ensure that infrastructure will be delivered in accordance with demand and will not be unreasonably deferred or avoided. Particular scrutiny will be given to:

- The credibility of the ISDP sequencing;
- The enforceability of delivery triggers;
- Whether proposed security mechanisms are sufficient to mitigate delivery risk, including where infrastructure is tied to later development stages.

#### **e) Non-Binding Nature of Negotiations**

All discussions and communications during the negotiation of a Planning Agreement are without prejudice and not binding on either party until a formal written offer is submitted, publicly exhibited and then the agreement is endorsed and executed by Council.

Any preliminary agreement to individual items is subject to change during the negotiation process, as Council must assess the total public benefit and ensure balance and alignment with strategic planning outcomes.

Council reserves the right to revisit or adjust any previously discussed Planning Agreement elements if necessary to achieve a fair, integrated, and acceptable overall agreement.

### **5.4 Step 4: Public Notification and Exhibition Process**

Before entering into a Planning Agreement, Council will publicly exhibit the draft agreement and accompanying explanatory note in accordance with legislative requirements. The draft Planning Agreement shall be reported to the Council prior to public exhibition.

#### **a) Statutory Exhibition Requirements**

Council will publicly exhibit:

- The draft planning agreement;
- The draft Explanatory Note (in accordance with Clause 205 of the *Regulation*); and
- Any supporting material reasonably necessary to understand the nature, effect, and implications of the agreement.

The exhibition period will be for a minimum of 28 days, or as otherwise prescribed by relevant legislation at the time of exhibition.

Where a proposed planning agreement departs from Council's standard Planning Agreement template, or where the agreement requires bespoke drafting due to complex planning, infrastructure or staging issues, Council may engage its legal advisors to prepare or review the agreement to ensure statutory compliance and alignment with Council's policy framework.

The developer will be responsible for all reasonable legal costs incurred by Council in the preparation, review, and negotiation of the agreement.

#### **b) Methods of Exhibition and Notification**

Council will notify and make available the draft Planning Agreement package through:

- Public notice on Council's website;
- Notification via the NSW Planning Portal (where applicable);
- Other means as outlined in Council's Community Participation Plan.

#### **c) Consideration of Submissions**

All submissions received during the exhibition period will be considered by Council prior to determining whether to enter into the Planning Agreement.

#### **d) Re-notification of draft Planning Agreement**

Council will publicly re-notify a proposed Planning Agreement and the application to which it relates if changes have been made to the terms of the agreement after it has been previously publicly notified and inspected, as required by the Act or if Council otherwise considers it appropriate.

### **5.5 Step 5: Finalisation and Execution of the Agreement**

Following the public exhibition period and consideration of submissions, Council will determine whether to proceed with the proposed planning agreement. This process ensures all Planning Agreements are legally robust, aligned with strategic planning objectives, and provide enforceable public benefits.

#### **a) Council Consideration and Resolution**

A report will be prepared for Council (or its delegated authority) summarising:

- The proposed agreement and the public benefits to be delivered;
- Any modifications made in response to public submissions;
- Outcomes of the internal assessment and Acceptability Test;
- Advice from legal, probity, and financial experts, if applicable;
- Implications for infrastructure delivery, sequencing, and risk management.

Council must formally resolve to enter into the planning agreement before execution. While the agreement may be considered in conjunction with a related planning decision, its approval must remain a distinct and independent process.

#### **b) Execution of the Planning Agreement**

Once approved, the agreement must be signed by:

- All relevant parties to the agreement, including landowners (and any entity assuming responsibility for delivery); and
- An authorised signatory on behalf of Council, in accordance with adopted delegations.

The executed agreement and final explanatory note will be published on Council's website and the NSW Planning Portal, consistent with legislative requirements.

### **c) Registration on Title**

Where the agreement relates to land, infrastructure, or material public benefits, Council may require that the planning agreement be registered on the title of the relevant land in accordance with **Section 7.6 of the Act**. Registration ensures the agreement binds future landowners and protects the delivery of agreed contributions.

The developer is responsible for all costs associated with registration and removal of registration, including:

- Preparation of title instruments;
- Obtaining written consent from any mortgagee or registered interest holder;
- Lodgement with NSW Land Registry Services.

## **5.6 Step 6: Implementation, Monitoring, and Compliance**

Following execution, Council will oversee the implementation of all planning agreements to ensure that obligations are delivered as agreed, infrastructure is provided in a timely and staged manner, and the community receives the intended public benefits.

### **a) Council Oversight and Responsibility**

Council will:

- Maintain oversight of all obligations under the Planning Agreement, including infrastructure delivery, land dedications, monetary payments, and works-in-kind;
- Monitor compliance with agreed staging, delivery triggers, and sequencing as outlined in the Infrastructure Services Delivery Plan (ISDP);
- Coordinate across internal departments (e.g. planning, infrastructure, legal, finance, development engineering) to track performance.

A designated officer or team may be assigned responsibility for ongoing monitoring of each planning agreement.

### **b) Public Reporting and Transparency**

Council will publish:

- All executed agreements and associated explanatory notes;
- A summary of key obligations and contributions;
- Progress updates in Council's Planning Agreements Register and quarterly or annual planning contributions reports (where applicable).

This ensures community visibility of developer contributions and supports public accountability.

## 6. Public Notification and Transparency

Council is committed to transparency throughout the planning agreement process — from negotiation to delivery — to ensure community confidence in developer contributions and public benefit outcomes.

### 6.1 Publication of Executed Agreements

Executed planning agreements will be published on:

- Council's website; and
- The NSW Planning Portal, as required under the *Regulation*.

Published materials will include the signed agreement, final explanatory note, and any amendments.

### 6.2 Planning Agreements Register

Council will maintain a publicly accessible **Planning Agreements Register** in accordance with **Section 206 of the Regulation**, containing:

- Developer and site details;
- Summary of contributions;
- Execution and registration dates;
- Delivery status and any amendments.

The register will be updated regularly.

### 6.3 Reporting and Oversight

Council will report on Planning Agreement implementation through:

- Quarterly or annual updates to Council and/or committees;
- Inclusion in infrastructure planning, budgeting, or capital works reports; and
- Publication in its annual report information on the effect and compliance of planning agreements as required by s7.5(5) of the Act.

Where available, Council may publish progress dashboards showing infrastructure delivery.

### 6.4 Community Access to Information

Council will provide reasonable public access to relevant Planning Agreement -related documentation, subject to confidentiality or legal limitations, in line with the *Government Information (Public Access) Act 2009 (NSW)*.

## 7. Contributions Valuation and Administration

### 7.1 Forms of Contributions

A Planning Agreement may provide for one or more of the forms of contribution identified in Section 3.4 of this Policy

### 7.2 Valuation of Contributions and Independent Assessments

All contributions offered under a planning agreement must be fairly, transparently, and independently valued to ensure they deliver a genuine public benefit and align with the principles set out in this Policy.

Council requires that:

- Land, works-in-kind, or other non-monetary public benefits must be valued by a suitably qualified and independent registered valuer or quantity surveyor.
- Valuations must be based on current market value or industry-standard cost estimates, depending on the type of contribution.
- Where land or works are proposed in lieu of monetary contributions, Council will assess their monetary equivalence to determine whether the public benefit meets or exceeds what would otherwise be achieved through standard development contributions (s7.11 or s7.12).
- The valuation must form part of Council's consideration of whether the offer meets the public interest and acceptability test in accordance with Section 4.1 of this Policy.
- In cases where a planning agreement is linked to an uplift in land value (e.g. through a rezoning), Council may require an independent land value uplift assessment to inform the scale of contributions proposed.
- All valuation reports must be submitted in a form acceptable to Council and may be subject to independent peer review at the developer's cost.

Council may refuse to proceed with a planning agreement where the value of the public benefit is unclear, unverified, or not commensurate with the impacts of the proposed development.

### 7.3 Indexation of Monetary Contributions

All monetary contributions under a Planning Agreement must be indexed from the date of agreement execution to the date of payment to preserve their real value.

Unless otherwise agreed, contributions will be indexed quarterly using the Consumer Price Index (CPI) – All Groups, Sydney, or a relevant construction-specific index where appropriate. The applicable index must be stated in the agreement.

Each staged payment will be indexed separately. Council will not accept under-indexed contributions.

### 7.4 Use and Distribution of Contributions

Monetary contributions provided under a Planning Agreement must be applied to the public purposes specified in the agreement and aligned with Council's infrastructure priorities and planning strategies.

Council may pool contributions from multiple Planning Agreements to fund major or shared infrastructure. Where pooling is necessary, infrastructure delivery may be deferred until sufficient contributions have been collected.

Council will maintain transparency by reporting on the receipt, allocation, and use of contributions through the public Planning Agreement register and compliance reports.

7.5 Refunds and offset Council will not provide refunds of monetary contributions or other benefits made under a planning agreement

Council generally does not support the inclusion of credits in planning agreements. However, in limited circumstances, Council may agree to apply a credit towards a developer's Section 7.11 or 7.12 contributions where; Works-in-Kind (WIK) provided under a planning agreement directly align with infrastructure items identified in an applicable Contributions Plan.

Where such a credit is accepted, the following principles apply:

- The value of any credit will be based on the value attributed to the item in the applicable Contributions Plan.
- The credit amount must be agreed in advance and clearly documented in the planning agreement;
- The credit must not compromise the integrity, funding, or delivery of the Contributions Plan.

## **7.6 Land Valuation of Land to be Dedicated Where Rezoning Has Occurred or proposed.**

This clause establishes a consistent approach to valuing land proposed for dedication under a Planning Agreement where rezoning has occurred or is proposed by, or on behalf of, the developer.

Where a Planning Agreement involves the dedication of land and the subject land has been, or is proposed to be, rezoned through a planning proposal initiated or supported by the developer (or their predecessor in title), the value of the land must be determined based on its zoning, permissible uses and development standards immediately prior to the approval of the rezoning or planning proposal. This is referred to as the pre-uplift valuation baseline.

Council will apply this provision in all relevant circumstances, including where:

- A site is subject to a master plan, precinct plan, or planning proposal prepared by or for the developer;
- Land is being transferred or dedicated after rezoning, either by the initiating developer or a subsequent owner or developer;
- There is a measurable uplift in development potential (e.g. increased FSR, height or land use permissibility) associated with Council-supported rezoning.

### **Requirements**

1. The proponent must submit an independent market valuation of the land prepared by a certified valuer. Council may, at its discretion, require a second valuation or commission its own.
2. The valuation must:
  - o Clearly identify the land value under the pre-rezoning planning controls (base case); and
  - o Distinguish any uplift attributable to the rezoning or planning proposal process.
3. The Council will use the pre-uplift valuation as the basis for assessing the value of land dedications under the Planning Agreement.

This approach prevents the inflation of public benefit claims through the use of post-rezoning land values.

## 8. Security and Performance Measures

Council ensures that all Planning Agreements are legally enforceable, financially secure, and effectively implemented. To protect the interests of the community and ensure that developers meet their commitments, Council applies security and performance measures to all Planning Agreements.

This section outlines the mechanisms used to secure contributions, monitor performance, and enforce compliance, ensuring that public benefits are delivered as agreed.

### 8.1 Security Requirements for Agreements

To safeguard the public interest and ensure the timely and reliable delivery of planning agreement obligations, and in accordance with section 7.4(3)(g) of the Act, Council requires all Planning Agreements to include appropriate security measures. These security provisions are intended to protect Council and the community in the event of default, non-compliance, or delayed delivery by the developer.

#### **Purpose of Security**

The requirement for security under a Planning Agreement serves the following purposes:

- To protect against non-performance or delayed delivery of the developer's obligations under the agreement.
- To enable Council to step in and complete the developer's obligations in full or in part where the developer fails to comply with the terms of the agreement.
- To ensure public infrastructure and community benefits are delivered in accordance with agreed development triggers, such as prior to CC, OC, SWC, or SC.
- To ensure developer contributions are enforceable, predictable, and transparent.

#### **Forms of Acceptable Security**

Council may require security as follows, depending on the nature, timing, and risk profile of the obligations:

- Unconditional and irrevocable bank guarantee issued by an Australian financial institution, in a form acceptable to Council, without any expiry or end date.
- Cash Bond held in trust by Council to cover the full value of Planning Agreement obligations, including contingency and indexation allowances.
- The ability for Council to withhold the issue of a CC, SWC, OC and/or SC until the Developer has satisfied some or all of its obligations under the Planning Agreement.
- Where the Development Contributions include the dedication of land to Council, a right for Council to:
  - compulsorily acquire the relevant land for \$1 in the event the Developer fails to dedicate it to Council by the time required under the Planning Agreement; and/or
  - register a caveat on the title of the relevant land until such time as it is dedicated to Council.

Council does not accept registration of the Planning Agreement on title as a substitute for separate security arrangements and does not generally accept insurance bonds in place of bank guarantees.

#### **Calculation of Security Value**

Security in the form of a bank guarantee or cash bond is generally only required for works and works-in-kind obligations under a Planning Agreement. Security is not required for monetary contributions or land dedications. The security (bank guarantee or cash bond) required will:

- Be equivalent to 100% of the estimated cost of fulfilling the developer's obligations plus contingency buffer as below.
- Be supported by independent and verifiable valuation evidence, such as certified quantity surveyor reports or recognised construction cost indices, to the satisfaction of Council.
- Include an appropriate contingency buffer, as determined by Council on a case-by-case basis, to reflect the assessed delivery risk. The contingency buffer will generally range from 50% to 100%, depending on factors such as project complexity, staging, developer track record, and the nature of the contributions.
- Be expressed in current dollars and subject to indexation in accordance with the terms of the agreement.

The total security provided must not be less than 150% of the estimated value of the works or obligations under the planning agreement.

#### **Timing and Release of Security**

- Security must be provided prior to the issue of any relevant development triggers, including but not limited to CC, SWC, SC, or OC, as stipulated in the planning agreement.
- Staged or partial security release may be permitted where obligations are delivered in sequenced stages aligned with the approved Infrastructure Services Delivery Plan (ISDP).
- Security will only be released upon written confirmation by Council that the relevant obligations have been satisfactorily completed and accepted by Council.

#### **Enforcement and Default**

In the event of default or underperformance by the developer, Council may:

- Issue a notice to the developer requiring a default or breach to be remedied within a specified time.
- Call upon any security held (including bank guarantees, cash bonds or other instruments) to recover costs incurred in completing or rectifying the developer's obligations.
- Step in and carry out the delivery of any outstanding works, acquire land or deliver other public benefit on behalf of the developer using any security held or recovering its costs from any security held or by other means.
- Register or enforce any caveats, charges or legal instruments over land to be dedicated under the agreement or land associated with the planning agreement.
- Recover all reasonable administrative, legal, professional and project management costs incurred as a consequence of the default.
- Initiate enforcement proceedings in accordance with the Act or seek legal remedies under the agreement.

## 8.2 Timing and Staging of Contributions

Planning agreements must clearly identify when and how contributions are to be delivered, ensuring alignment with the staging of development and corresponding infrastructure demand. Contributions must be sequenced to avoid both premature provision (which may impose undue risk or cost) and delayed delivery (which may undermine community benefit and planning outcomes).

### Principles

The timing and staging of contributions must:

- Reflect the outcomes of the Infrastructure Needs Assessment and align with the ISDP.
- Be tied to specific development triggers, such as issue of a CC, SWC, SC, or OC.
- Ensure public infrastructure and benefits are delivered in parallel with or ahead of the development impacts they are intended to mitigate.
- Support Council's strategic infrastructure delivery programs and avoid ad hoc or fragmented infrastructure provision.

### Staged Delivery

For developments delivered in stages:

- The Planning Agreement must include a staging schedule identifying:
  - Contributions (monetary, works, land) to be provided at each stage.
  - Development triggers for each contribution.
  - Any partial fulfilment arrangements (e.g. partial land dedication or phased works).
- The ISDP must support the proposed staging and demonstrate that service and infrastructure capacity will be maintained throughout the development lifecycle.

### Preconditions for Progression

- The Planning Agreement may provide for the withholding of CCs, SWCs, SCs or OCs if contributions due at that stage are not delivered or secured to Council's satisfaction.

- Deferred delivery or retrospective fulfilment of contributions is not permitted unless explicitly authorised by the agreement and supported by appropriate security.

### **Flexibility and Variations**

- Council may consider alternative sequencing or revised staging plans where:
  - Justified by updated infrastructure analysis; and
  - Accompanied by satisfactory risk mitigation measures (e.g. increased security or interim works).
- Any adjustment must be documented by a deed of variation and subject to probity, legal, and financial review.

### **Monitoring and Enforcement**

- Council will actively monitor the timing and staging of contributions.
- Non-compliance may result in:
  - Enforcement action under the Act,
  - Withholding of approvals, where permitted by law,
  - Calling on security instruments.

### **Modification of Staging After Planning Agreement Execution**

Where a developer proposes to modify the approved staging of a development (e.g. via a modification application under section 4.55 of the Act) after a Planning Agreement has been executed, Council will assess whether the proposed changes affect the timing, feasibility, or enforceability of infrastructure delivery obligations under the Planning Agreement.

Council may request negotiations on:

- An updated Infrastructure Services Delivery Plan (ISDP);
- Adjusted or additional security instruments to mitigate delivery risk;
- Interim infrastructure or service measures to avoid capacity shortfalls; or
- A formal Deed of Variation to amend the Planning Agreement, subject to legal, probity, and financial review.

Pursuant to s4.55(3) and s4.15(1)(a)(iiia) of the EPA Act, Council will be required to take into consideration any planning agreement that has been entered into that apply to the land to which the modification application relates when determining an application for modification of a consent.

Proposed changes to staging in a Planning Agreement that materially affect infrastructure triggers or community outcomes may not be supported unless public benefit outcomes are preserved or improved.

## **8.3 Dispute Resolution Mechanisms**

To ensure that disputes arising under a planning agreement are resolved fairly, efficiently and without unnecessary delay, each Planning Agreement must incorporate a clear and enforceable dispute resolution mechanism. A Planning Agreement must have a dispute resolution mechanism pursuant

to s7.4(3)(f) of the Act. The purpose of this mechanism is to minimise litigation, support continued cooperation between the parties, and protect public outcomes associated with the agreement.

### **Dispute Resolution Process**

All Planning Agreements must include a structured dispute resolution clause, which as a minimum provides for the following steps:

1. Notification  
Either party may give written notice to the other identifying the nature of the dispute and requesting resolution.
2. Senior Officer Negotiation  
Within 14 days of the notice, senior representatives of the parties must meet (in person or virtually) to attempt good faith negotiation of the matter.
3. Mediation  
If unresolved within 21 days of the initial meeting, the dispute may be referred to an independent mediator agreed to by both parties or, failing agreement, nominated by the President of the Law Society of NSW.
4. Expert Determination (optional)  
For technical or valuation matters, the parties may agree to refer the dispute to an appropriately qualified independent expert whose determination will be binding (unless otherwise agreed).
5. Legal Proceedings  
If mediation or expert determination fails to resolve the dispute, either party may commence legal proceedings. However, this does not affect Council's rights to enforce compliance, call on security, or exercise any statutory powers under the Act.

## **8.4 Ensuring Compliance and Enforcement**

To protect public interest and ensure the delivery of planning agreement obligations, Council requires that all Planning Agreements include clear and enforceable provisions addressing default, rectification, and enforcement. These provisions enable Council to act promptly in the event of non-compliance or underperformance by the developer.

## **9. Governance and Probity Safeguards**

Council is committed to ensuring all Planning Agreements are managed with integrity, transparency and in the public interest. Strong governance and probity controls are essential to maintaining community confidence in the planning system and to safeguarding against real or perceived conflicts of interest.

### **9.1 Delegation to negotiate and prepare / amend a Planning Agreement**

To maintain the integrity of the Planning Agreement process, clear boundaries must be maintained between developers, Councillors, and Council officers.

Both parties should ensure they appoint a person to represent them in the negotiation of the Planning Agreement. Council will appoint a Council officer/s with appropriate delegated authority to negotiate a Planning Agreement on behalf of the Council. Council may also involve an independent person(s)

or expert to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome.

Councillors will not be involved in the negotiation of the Planning Agreement with a developer or their nominated representative/s during the period of the negotiation, but will, in their role as Councillors, ultimately endorse and approve the Draft Planning Agreement (or amended Planning Agreement) by resolution to exhibit and execute the Agreement.

## 9.2 Separation of Statutory and Commercial Functions

Planning Agreements often intersect with development proposals and rezoning applications. To ensure impartiality and regulatory independence, Council separates its statutory assessment functions from its role in negotiating planning agreements.

Council officers responsible for assessing development applications or planning proposals must not be involved in negotiating the terms of any related planning agreement. Where Council has a financial or property interest in a site, it will engage an independent officer or external party to manage the planning agreement process. These safeguards ensure that decisions are made objectively and that no undue influence is exerted over regulatory processes.

## 9.3 Conflict of Interest Protocols

To uphold public confidence in the planning system, all parties involved in a planning agreement must act transparently and avoid any real or perceived conflict of interest.

Council staff, consultants and elected members must disclose any personal, financial, or professional interests that could influence their role in the planning agreement process. Where a conflict is identified, appropriate steps must be taken in accordance with Council's Code of Conduct—such as recusal, reassignment of duties, or additional oversight as declared in accordance with Council's Conflict of Interest Policy

Council officers who have assessed a related development application must not participate in negotiating or approving the associated Planning Agreement unless a formal peer review process is undertaken and risk mitigation measures are in place.

## 9.5 Probity in Meetings, Documentation and Records

Meetings with developers shall be conducted formally, include at least two Council officers, and be documented with written records retained in Council's official systems. All correspondence, technical reports, legal advice, valuations and financial records related to a planning agreement must be filed in the relevant Planning Agreement case record.

# 10. Review Modification, and Assignment/Novation of Agreements

Planning Agreements must be capable of being reviewed and modified in response to changing circumstances and must provide a lawful and transparent process for amendment or termination. This section establishes Council's approach to managing post-execution changes to Planning Agreements, in accordance with the Act, the Regulation, and Council's public interest obligations.

## 10.1 Review of Agreements

Council will generally require provisions to be included in planning agreements requiring review planning agreements where:

- a) The development to which the agreement relates has materially changed (e.g. through a modification application or rezoning);
- b) Infrastructure or public benefit requirements have shifted due to updated strategic plans or servicing needs;
- c) A party to the agreement requests a variation or identifies ambiguity, error or inconsistency;
- d) Council audits or compliance monitoring identifies non-performance or non-alignment with current policy or infrastructure delivery schedules.

## 10.2 Modification of Agreements

A planning agreement may only be amended:

- By mutual consent of all parties to the agreement; and
- In accordance with the procedures set out in the agreement and the *Act* and Regulation.

Any proposed modification must:

- Be documented in the form of a Deed of Variation, which clearly identifies the changes proposed;
- Be accompanied by an updated Explanatory Note;
- Be subject to legal and governance review;
- Be reported to Council for determination, where required; and
- Be publicly exhibited for not less than 28 days.

Where modifications relate to the timing, nature or value of developer contributions, Council may require:

- An updated valuation or quantity surveyor assessment;
- Revised security arrangements; and
- Updates to the Planning Agreements Register and public documents.

## 10.3 Assignment and Novation of Agreements

Council will generally require a provision be included in a Planning Agreement restricting a developer from assigning or novating any of its rights or obligations under a Planning Agreement without the prior written consent of Council. Council may grant such consent where:

- a) A deed of assignment or novation between the developer, the incoming party and the Council in terms agreeable to the Council is executed at no cost to Council;
- b) There is no existing breach of the Planning Agreement;
- c) The Planning Agreement is registered on title and the incoming party agrees to registration where applicable.

## 11. Appendices and Supporting Documents

This section provides supporting documents, guidelines, and reference materials that assist in the interpretation, application, and implementation of Planning Agreement in Council. These documents ensure that Planning Agreements are structured, legally compliant, and aligned with best practices in planning and development contributions.

The appendices serve as reference materials for developers, Council staff, and the community to understand the process, requirements, and obligations associated with Planning Agreements.

### 11.1 Standard Planning Agreement Template

To ensure consistency and compliance with legislative requirements, Liverpool City Council provides a Standard Planning Agreement Template that developers must use when preparing a Planning Agreement.

A copy of the Standard Planning Agreement Template is available on Liverpool City Council's website and at Council's Planning and Development Offices.

### 11.2 Acceptability Test

To ensure that all Planning Agreement delivers a net community benefit and are consistent with Council's policy framework, applicants must complete and submit the Acceptability Test Checklist as part of any Planning Agreement proposal.

The Acceptability Test is to be applied in accordance with Section 4.1 – Public Interest and Acceptability Test of this Policy.

Council will assess all Planning Agreement proposals against the criteria outlined in Section 4.1, supported by the information provided in the completed checklist.

Failure to adequately address the Acceptability Test may result in the Planning Agreement proposal not being supported.

#### Acceptability Test Checklist

Category	Assessment Questions	Yes / No / Comments or Supporting Material
<b>1. Strategic Alignment</b>	Is your Planning Agreement proposal consistent with Council's Community Strategic Plan, LSPS, LEP, local contributions plans? , Endorsed Infrastructure Services Delivery Plan (ISDP)?	

Category	Assessment Questions	Yes / No / Comments or Supporting Material
	Is the proposed infrastructure aligned with Council's adopted capital works programs or asset management priorities?	
<b>2. Public Interest and Community Benefit</b>	Does your proposal offer public benefits that go beyond conditions normally required under development consent or s7.11/s7.12 contributions?	
	Are the proposed public benefits designed to serve the broader community, rather than just the occupants or users of the proposed development?	
<b>3. Legal and Policy Compliance</b>	Does the draft planning agreement comply with the Act and the Regulation, any relevant <i>Ministerial Directions</i> , and the <i>Practice Note</i> ?	
	Is the agreement lawful, enforceable, and supported by appropriate authorisation within your organisation?	
<b>4. Duplication and Statutory Obligations</b>	Are any of the items you propose in the Planning Agreement already required under legislation, SIC charges, or State Planning Agreements (e.g. Works-in-Kind agreements)?	
	Are any items proposed that may duplicate infrastructure already committed to under a State-led Planning Agreement, a State infrastructure delivery mechanism, or by other State agencies?	
	Are any of the proposed Planning Agreement items required under a condition of development consent issued (or to be issued) by a consent authority?	
<b>5. Value and Equivalence</b>	Has independent valuation evidence been provided for any proposed land, works, or infrastructure (e.g. quantity surveyor report or certified valuation)?	
	Having regard to local priorities, would a monetary contribution provide greater public benefit or flexibility to Council than the direct delivery of infrastructure?	
	Is any proposed infrastructure not required within the next 10 years, having regard to demand forecasts or development staging?	
	If so, have the whole-of-life costs of the infrastructure been considered and addressed (e.g. interim maintenance, depreciation, and security)?	
	Where immediate delivery is not justified, have you offered one or more of the following:	

Category	Assessment Questions	Yes / No / Comments or Supporting Material
	a) Ongoing maintenance funding for early delivery, b) A monetary contribution in lieu of works, or c) Staged delivery of only essential infrastructure, with a contribution for the balance?	
<b>6. Public Value for Money</b>	Does the proposal provide clear public value for money compared to standard contributions or other lawful delivery mechanisms?	
	Provide justification demonstrating how the proposal delivers value for money to the community compared to standard contributions or alternative delivery mechanisms.	
	Provide details of how lifecycle costs have been accounted for, including any impacts on the long-term benefit of the proposed infrastructure.	
	Does the Planning Agreement ensure that any land dedications or works are valued using the pre-rezoning (pre-uplift) planning controls, in accordance with Section 7.6 of this Policy, where applicable?	
<b>7. Timing and Delivery Certainty</b>	Provide details of all proposed triggers for the delivery of works or contributions (e.g. CC, SWC, SC, OC).	
	Provide details demonstrating how the proposed timing of infrastructure delivery aligns with Council's Infrastructure services delivery strategy.	
	If infrastructure is proposed to be delivered ahead of demand, have you proposed a funded interim maintenance and management plan?	
<b>8. Governance and Probity</b>	Have you declared all potential or actual conflicts of interest relating to this proposal?	
	Have you, or anyone representing you, engaged with Councillors or staff in a way that could be perceived as lobbying or undue influence?	
	Are you aware that Council separates roles in statutory assessment and Planning Agreement negotiation, and agree to respect this process?	
<b>9. Transparency</b>	Confirm that full public exhibition of the draft planning agreement and explanatory material is supported in accordance with the Environmental Planning and Assessment Regulation.	

Category	Assessment Questions	Yes / No / Comments or Supporting Material
	Confirm that the final Planning Agreement may be published on Council's public register and subject to ongoing monitoring and compliance review.	
<b>10. Additional Demand Justification</b>	Have you provided an <b>Infrastructure Needs Assessment (INA)</b> demonstrating that the development creates demand for infrastructure not covered under Council's s7.11 or s7.12 contributions plans?	

### Proposed Asset Lifecycle and Maintenance Considerations

Council will assess the full whole-of-life cost of any proposed infrastructure under a Planning Agreement — including upfront capital cost, long-term maintenance, and asset depreciation.

Where infrastructure is delivered significantly ahead of demand, the Planning Agreement must address how early-year maintenance costs will be covered. Council may require the developer to:

- Contribute ongoing maintenance funding for the interim period, or
- Convert infrastructure offers to monetary contributions, if that better aligns with Council's capital and asset management strategies.

### Infrastructure Prioritisation and Flexibility

Where the proposed infrastructure is not required within the foreseeable future (e.g. next 10–20 years), Council may determine that a monetary contribution is preferable. This enables the delivery of other high-priority infrastructure within the same contributions catchment or planning precinct.

Council reserves the right to require monetary contributions in lieu of proposed works if this approach:

- Aligns with current demand,
- Supports infrastructure sequencing, and
- Delivers greater public value for money and service outcomes.

## 11.3 Public Benefit Valuation Guidelines

To ensure that public benefits offered under a Planning Agreement deliver measurable value to the community and are assessed transparently and consistently, Liverpool City Council applies the following Public Benefit Valuation Guidelines. The value of a benefit proposed under a Planning Agreement will be determined prior to the Planning Agreement being publicly notified.

These guidelines classify contributions into three categories:

1. Public Material Benefit (Provision of Infrastructure)
2. Land Dedication at No Cost to Council

### 3. Monetary Contributions

All public benefits must be accompanied by independent valuation reports from qualified professionals, with Council reserving the right to commission peer reviews or reject valuations that do not meet policy standards.

Where infrastructure proposed under a Planning Agreement overlaps with items already included in a Section 7.11 or 7.12 Contributions Plan and Council agrees to a credit or offset arrangement, Council will apply a partial credit only to the equivalent value of the CP-listed item.

Any additional cost or scope beyond the Contributions Plan standard (e.g. upgraded finishes, larger footprint, early delivery) will be considered a voluntary public benefit under the Planning Agreement and not credited against contributions, unless otherwise agreed in writing by Council.

Council will not support double dipping, such as:

1. Receiving credit for the full upgraded item when only part of it replaces a Contributions Plan obligation, or
2. Claiming credit under both a Planning Agreement and a Contributions Plan for the same infrastructure.

#### **11.3.1 Public Material Benefit (Provision of Infrastructure)**

Where a developer proposes to deliver public infrastructure under a Planning Agreement—such as roads, stormwater assets, open space, or community facilities—the following requirements apply:

##### **a) Construction cost estimates**

Notwithstanding any estimated construction costs considered during the negotiation of the planning agreement or any agreed value of works included in a planning agreement, a developer will be required to complete the works notwithstanding the actual cost of construction exceeding the estimated construction cost or agreed value.

##### **b) Infrastructure Standards**

All infrastructure must be designed and delivered in accordance with:

- Council's design specifications and engineering standards;
- Relevant public domain and urban design guidelines; and
- Council's asset management and lifecycle performance requirements.

##### **c) Lifecycle Costing**

A whole-of-life cost analysis must be submitted and must include:

- Minimum 10-year projections of operational and maintenance costs;
- Depreciation schedules aligned with Council's asset accounting standards;
- Identification of interim maintenance responsibilities where assets are delivered ahead of projected community demand.

**d) Council Valuation and Adjustments**

Council may apply a downward adjustment to the assessed value of proposed infrastructure where:

- Lifecycle costs are considered high relative to their function or projected use; or
- The infrastructure is delivered significantly in advance of demand without appropriate interim maintenance arrangements.

**e). Design Compliance and Pre-Construction Approvals**

Unless otherwise specified in the planning agreement, all infrastructure works delivered under a Planning Agreement must comply with Council's current design and construction specifications and relevant engineering standards.

Prior to the commencement of any physical works, the developer is responsible for obtaining:

- All relevant planning and statutory approvals (e.g. construction certificates, permits), and
- Written approval from Council for all final designs, staging plans, and construction methodologies.

Failure to secure required approvals prior to works commencing may result in non-acceptance of the works, withholding of certificate release, or enforcement action under the planning agreement.

**f) Maintenance Requirement for Open Space**

Where a developer proposes to deliver public open space (e.g. parks, landscaped reserves, stormwater corridors) under a Planning Agreement, the developer must either:

- Maintain the asset for a minimum period of 5 years following practical completion, to Council's satisfaction, OR
- Enter into an agreement with Council to provide maintenance funding sufficient to cover that period

This ensures the asset is handed over in a sustainable condition and aligns with Council's long-term asset management and operational budgeting obligations.

**11.3.2 Land Dedication at No Cost to Council**

Where a developer proposes to dedicate land to Council, the following guidelines apply:

**a) Strategic Need and Suitability**

- Land must be required for a public purpose and be identified in or aligned with:
  - Local Strategic Planning Statement (LSPS),
  - Contributions Plan,
  - LEP/DCP zoning or objectives, or
  - Infrastructure Services Delivery Plan (ISDP).
- Council may decline dedication of land that is:

- Surplus to requirements,
- Inappropriately located,
- Operationally inefficient or too costly to maintain.

#### **b) Legal Status and Servicing**

- Land must be:
  - Unencumbered and legally subdivided (fee simple title),
  - Serviced and accessible,
  - Free of easements, encroachments, or legal restrictions (unless accepted by Council),
  - Dedicated at no cost to Council, including registration and conveyancing.

#### **c) Contamination and Site Condition**

Any land proposed to be dedicated to Council under a Planning Agreement must be demonstrated to be suitable for the purpose for which it is to be dedicated.

The developer must provide, at its cost:

- A Site Audit Report; and
- A Site Audit Statement,

both prepared by an accredited Site Auditor confirming that the land is suitable for its intended public purpose in accordance with all applicable legislation and relevant guidelines.

The developer must indemnify Council against any claims, liabilities, losses, damages, costs or expenses arising from contamination that occurred prior to the date of dedication. Council will not accept dedication of land unless satisfied that the land is suitable for its intended purpose and does not expose Council to unacceptable contamination risk.

#### **d) Valuation**

Where a planning agreement involves the dedication of land or the provision of works-in-kind, a valuation or cost estimate must be prepared to determine the fair value of the public benefit. All valuations and costings must meet the following requirements:

Qualification of Valuer or Quantity Surveyor

Any valuer or quantity surveyor (QS) engaged for the purposes of this Policy must:

- Be currently practising in New South Wales;
- Be a current member of a recognised professional organisation (e.g. Australian Property Institute for valuers, or Australian Institute of Quantity Surveyors for QSs) and have held such membership for at least five (5) years;
- Have a minimum of three (3) years of relevant experience in valuing or assessing land or works of a similar type and scale to those proposed under the planning agreement.

Valuation Requirements

All valuations must:

- Be prepared by a Registered Valuer;
- Be based on the land's intended public use, not residual or alternative development potential;
- Account for physical and legal site constraints, including flooding, topography, access limitations, and easements;
- Reflect the current planning controls, including zoning and permissible uses;
- Be no more than six (6) months old at the time of submission to Council;
- Exclude any value uplift resulting from infrastructure delivered under the same planning agreement or related planning proposal;
- Avoid double-counting improvements or components that are proposed as both land value and works-in-kind.

Once the value or cost estimate of the public benefit is determined, the developer will be required to complete the works and dedicate the land notwithstanding the actual cost of construction or actual value of the land at the time of dedication exceeding the estimated cost or agreed value.

### 11.3.3 Monetary Contributions

Where a developer proposes a monetary contribution in lieu of works or land, the following applies:

- Contributions must be:
  - Indexed to CPI or another agreed benchmark (e.g. ABS Construction Index),
  - Clearly defined by infrastructure category, delivery area, and intended purpose,
  - Supported by rationale for public benefit equivalence.
- Council may prefer a monetary contribution where:
  - Infrastructure is not yet required based on staging or ISDP sequencing,
  - Lifecycle or interim management costs for early-delivered infrastructure would be excessive,
  - The cash contribution enables timelier delivery of essential infrastructure elsewhere in the same catchment.

Council will assess all monetary offers against value-for-money, flexibility, and strategic alignment with infrastructure priorities.

### 11.3.4 Council Review and Discretion

Council reserves the right to:

- Commission independent peer reviews of any valuations at the developer's cost,
- Reject valuations that:
  - Are prepared by consultants with conflicts of interest,
  - Are based on outdated or inappropriate assumptions,
  - Omit necessary information (e.g. lifecycle costs, encumbrances),
- Adjust accepted values to reflect actual net community benefit,
- Require developers to resubmit revised valuations or adjust the Planning Agreement offer to ensure fairness, transparency, and strategic consistency.

All valuations and supporting documentation must be submitted with the Acceptability Test Checklist (Section 11.2) and are subject to internal review prior to progressing to public exhibition or legal drafting.

### 11.4 Developer Contribution Calculation Methodology

Council applies a standardised methodology for calculating developer contributions under Planning Agreement to ensure fairness, consistency, and financial accountability.

Key Calculation Factors:

1. Infrastructure Demand Generated by the Development:
  - High-density developments may require higher contributions for transport, public spaces, and utilities.
2. Costs of Providing Public Benefits:
  - Contributions are based on cost estimates for infrastructure delivery using:
    - Construction cost databases.
    - Recent tender prices for similar projects.
    - Market valuations for land dedications.
3. Indexation of Contributions:
  - All monetary contributions are indexed to reflect inflation and construction cost increases.
4. Staged Contributions for Large-Scale Developments:
  - If a development is completed in stages, contributions must be linked to milestones such as:
    - Number of dwellings completed.
    - Completion of key infrastructure components.



### Attachment 3 – Planning Policy Comparison (The updated Policy vs 2019 Policy)

Section (Updated policy)	Updated Policy (quoted)	Corresponding 2019 Policy (quoted)	Key Differences / Commentary
<b>1.1 Purpose</b>	"The purpose of this policy is to establish a clear, transparent and consistent framework for the use of Voluntary Planning Agreements."	"The purpose of this policy is to provide clarity and certainty to developers as to: the circumstances in which a Planning Agreement may be entered into with Council..."	Expands purpose to cover principles and updated processes. The purpose also elaborates that VPAs entered into are intended to complement development contributions, not replace or reduce them.
<b>1.2 Application and Commencement</b>	"This Policy applies to all VPAs that Council may negotiate, enter into, or administer under Division 7.1 of the Act..."	"Section 7.4 of the EP & A Act sets out the circumstances under which a Planning Agreement may be entered into by Council."	Updated legislative references and broader application framing.
<b>1.3 Legal and Regulatory Framework</b>	"This Policy is guide by the legislative frame established under NSW planning law.... <i>Environmental Planning and Assessment Act 1979</i> ,... the Environmental Planning and Assessment Regulation 2021, and the NSW Planning Agreements Practice Note 2025..."	" <i>The current legal and procedural framework for Planning Agreements is set in subdivision 2 of Pat 7 of the Environmental Planning and Assessment Act 1979 (EP&amp;A Act)...</i> "	Introduces direct linkage with legislation, Practice Note and ministerial direction.
<b>1.4 Relationship to Council's Strategic Planning Documents</b>	"Planning agreements must align with Council's strategic planning framework..."	Implied with alignment with community strategic plan, does not state alignment with LSPS, Land Use Strategy, LEP, DCP or SEPP.	Stronger alignment to strategic plans introduced in 2026 draft.
<b>1.5 Principles of this Policy</b>	Lists fairness, transparency, accountability, public interest, timely infrastructure delivery.	Embedded in Section 5: "Planning Agreements will be governed by the following principles..."	Reworded and expanded. Consistent with NSW Practice Note.
<b>1.6 Definitions and Key</b>	"Act means the Environmental	Definitions appear later (Section 3).	Definitions moved up front and

<b>Terms</b>	Planning and Assessment Act 1979..."		more consistent with legislation.
<b>2. Objectives of the Policy</b>	Includes: Transparent agreements, Promote infrastructure delivery, align with community and public interest, expand scope of development contributions, encourage developer participation.	"Discussed briefly in section 2.2 'specific purposes'..."	The updated policy version is broader in scope, and refines terminology.
<b>3.1 When a Planning Agreement is Required</b>	"Council may require a the submission or negotiation of a planning agreement ...where public benefits are needed to address the impacts or deliver strategic outcomes..."	Generally discusses circumstances for preparing	Introduced criteria for mandatory VPA consideration (e.g. rezonings).
<b>3.2 Situations Where a Planning Agreement May Be Considered</b>	Includes voluntary agreements during DA process, post-consent, etc.	Covered generally under section 4.1 without sub-structuring.	Clearer structure and flexibility introduced in the updated policy
<b>3.3 Planning Agreements and Development Contributions</b>	"Planning agreements are distinct from, and do not automatically replace, development contributions under Sections 7.11 and 7.12 of the EPA Act 1979."	"A Planning Agreement is normally, but not exclusively, entered into in one (1) of the following...to provide Development contributions in lieu of, or in addition to, contributions under sections 7.11 and 7.12 of EP & A Act"	Updated legislative references and improved clarity.
<b>3.4 Types of Contributions Accepted</b>	Lists: monetary, dedication of land, works-in-kind, material public benefits, affordable housing, public domain.	General reference to contributions only.	Types of contributions clearly itemised
<b>4.1 Public Interest and Acceptability Test</b>	"Council will only enter into a planning agreement where it is satisfied...meets the acceptability	Not present	Entirely new – now a core principle per EP&A Direction and Practice Note.

	criteria under this policy, the NSW Planning Agreements Practice “Note (2025)...”		
<b>4.2 Net Community Benefit Principle</b>	"Planning agreements must deliver outcomes that provide a clear net community benefit."	Public benefit mentioned throughout, but not as a standalone principle.	Elevated to a standalone guiding principle.
<b>4.3 Probity, Governance and Accountability</b>	"Council will implement probity measures to manage conflicts of interest..."	Broadly discussed in section 8.1	Stronger procedural and ethical controls are included.
<b>4.4 Ensuring No Improper Influence</b>	Explicit mention of separation between planning merit and offers.	Implicit in 2019; not stated as a policy control.	Brought into alignment with Practice Note integrity controls.
<b>4.4 Use of VPAs where no relevant CP applies</b>	"In precincts or land release areas where no applicable Section 7.11 or 7.12 Contributions Plan is in place for the proposed development, Council may consider entering into a Voluntary Planning Agreement (VPA) to secure appropriate infrastructure contributions..."	Mentioned in passing in Section 4.4 "A Planning Agreement may be entered into where there is already a Contributions Plan in place or it may be entered into where there is no current Contributions Plan."	Provides a standalone section in the policy.
<b>5.1 to 5.6 Negotiation Process Steps</b>	Six clear steps: discussions, offer, assessment, exhibition, execution, monitoring.	discussed later in schedule to the policy, schedule 1, section 2.	It is integrated into the policy instead of a separate schedule
<b>6.1 Publication of Executed Agreements</b>	executed agreements to be published on Councils' website and the NSW Planning Portal as per the EP&A Regulations.	Publication generally discussed in relation to notification of VPAs but does not specify where VPAs will be published	Specifies publication of executed VPAs.
<b>6.2 Planning Agreements Register</b>	" Council will maintain a publicly accessible Planning Agreements Register in accordance with Section 7.5 of the Act..."	Not discussed.	Standalone section specifying a register and details of planning agreements to be kept.

<b>6.3 Reporting and Oversight</b>	Council will report on VPA implementation with annual or quarterly updated	Not mentioned	standalone reporting section added.
<b>6.4 Community Access to Information</b>	Council will provide reasonable public access to relevant VPA-related documentation, subject to confidentiality or legal limitations, in line with the Government Information (Public Access) Act 2009 (NSW).	GIPA Act Not mentioned.	Compliance with the GIPA Act now included in standalone section.
<b>7.1 Forms of Contribution</b>	Lists forms of contribution.	Referenced generally.	Expanded detail in 2025.
<b>7.2 Valuation Requirements</b>	Independent valuation required. Pre-uplift land value for dedications.	Valuation referred to, but not in detail.	Acceptability Test compliance now explicit.
<b>7.3 Indexation</b>	CPI or construction index applied.	Indexation mentioned briefly.	Clarified methodology.
<b>7.4 Use of Contributions</b>	Must align with community benefit purposes.	Not structured or detailed.	Stronger fiscal accountability.
<b>7.5 Refunds and Credits</b>	No refund of paid monetary contribution or credit to third parties..	Not detailed.	Adds clarity on developer rights.
<b>7.6 Land Valuation where rezoning has occurred or proposed</b>	"...the value of the land must be determined based on its zoning, permissible uses and development standards immediately prior to the approval of the rezoning or planning proposal. This is referred to as the pre-uplift valuation baseline..."	Not mentioned	Standalone section discussing the change in land value due to rezoning.
<b>8.1 Security Instruments</b>	Bank guarantees, bonds, caveats. Enforcement on default is also discussed in this section.	"Security for enforcement may be included..."	Procedural detail improved and increased enforceability. A minimum 150% security

			requirement to strengthen delivery assurance.
<b>8.2 Timing and Staging of contributions</b>	Contributions aligned to OC/SC/SWC – requires ISDP.	Timing mentioned generally.	Stronger sequencing via ISDP introduced.
<b>8.3 Dispute Resolution</b>	Mediation encouraged.	Briefly stated that an agreement must have a dispute resolution mechanism.	Improves contractual clarity.
<b>8.4 Ensuring compliance and enforcement</b>	Details enforceable provisions in the event of default, Council powers, notification and obligations	Not mentioned	Provides standalone section for clarity of enforcement powers.
<b>9.1 Role Separation and prohibition on Undue influence</b>	Notes that Councils are not to have any involvement with assessment or negotiation of CPAs	Not explicitly stated	Standalone section provided to address potential influences on VPAs.
<b>9.2 Separation of statutory and commercial functions</b>	Clarifies that Council officers assessing Das and Planning Proposals are not to be involved in negotiating terms of a planning agreement	Discussed briefly in section 8.1 probity	Standalone section provides further clarity of DA and strategic planners separation from VPA involvement.
<b>9.3 Independent Probity Oversight for High Risk Agreements</b>	Provides circumstances where an independent probity advisor can be appointed by Council for high value and complex VPAs.	Generally stated.	Independent probity roles now included.
<b>9.4 Conflict of Interest protocols</b>	Councillors and staff must declare interests.	Briefly noted in probity section.	New governance control.
<b>9.5 Transparency, reporting and public access</b>	Explanatory notes to be published on Councils' website	discussed in an earlier section 8.3	Specifically references compliance with EP&A Regulation.
<b>9.6 Probity in meetings, documentation and records</b>	"All planning agreement processes must be fully documented to ensure traceability, compliance, and accountability"	Meetings not mentioned	Standalone section provided to ensure sufficient record keeping.

<b>10.1 Review of Policy</b>	Biennial review proposed.	Every 4 years.	Improved policy responsiveness.
<b>Appendices (Templates, Checklists)</b>	"Includes template VPA offers, Acceptability test, checklists, process flowcharts."	None included.	A major addition, supporting better implementation.