



## 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

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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 (NSW).</i>
<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: <ul 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> </ul>
<b>Regulation</b>	<i>Environmental Planning and Assessment Regulation 2000 (NSW).</i>
<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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**AUTHORISED BY**

Council Resolution

**EFFECTIVE FROM**

27 Feb 2019

**DEPARTMENT RESPONSIBLE**

City Economy & Growth (Infrastructure Planning)

**REVIEW DATE**

27 Feb 2019

**VERSIONS**

<b>Version</b>	<b>Amended by</b>	<b>Changes made</b>	<b>Date</b>	<b>TRIM Number</b>
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 & 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

Attachment A



**PLANNING AGREEMENT POLICY  
PROCEDURES**



**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:

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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.

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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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