
Cessnock City Council Planning Agreement Policy

Date Adopted **25/05/2021** Revision: **2**

Table of Contents

1. POLICY OBJECTIVES.....	2
2. POLICY SCOPE	2
3. POLICY STATEMENT	2
4. FUNDAMENTAL PRINCIPLES	2
5. PUBLIC INTEREST AND PROBITY.....	3
6. THE ACCEPTABILITY TEST	4
7. CIRCUMSTANCES IN WHICH COUNCIL WILL CONSIDER THE NEGOTIATION OF A PLANNING AGREEMENT	5
8. APPLICATION OF CESSNOCK LOCAL ENVIRONMENTAL PLAN (LEP) 2011 TO DEVELOPMENT TO WHICH A PLANNING AGREEMENT RELATES	5
9. NEGOTIATION, NOTIFICATION, EXECUTION AND FINALISATION OF PLANNING AGREEMENTS	5
10. STRATEGIC CONSIDERATION	5
11. RESPONSIBILITIES	5
12. COMPLIANCE, MONITORING AND REVIEW	6
13. POLICY DEFINITIONS	7
14. POLICY ADMINISTRATION	9
15. POLICY AUTHORISATIONS	9
16. POLICY HISTORY	9
17. APPENDICES	9

1. POLICY OBJECTIVES

The objectives of this policy are to:

- 1.1. Establish a clear, open, transparent and accountable framework to govern the negotiation, use and implementation of Planning Agreements by Council.
- 1.2. Ensure that the framework is soundly based upon probity and enables efficient, fair and accountable negotiations and implementation of Planning Agreements.
- 1.3. Promote public trust and confidence in the processes of negotiation, execution and implementation of Planning Agreements.
- 1.4. Ensure that all parties involved have clarity about their roles and responsibilities when assessing, negotiating and implementing Planning Agreements.
- 1.5. Provide planning flexibility for Council to negotiate fair, reasonable and equitable Development Contributions by Proponents of Planning Proposals and Development Applications.
- 1.6. Enhance the range and extent of Development Contributions towards the optimal delivery of public infrastructure services and facilities in the Cessnock Local Government Area (LGA).
- 1.7. Establish mechanisms to give optimal effect to conservation offsets and to enhance the extent of Development Contributions made towards ensuring the conservation, protection and ongoing management of land, which is of environmental value and significance in the Cessnock LGA (including giving effect to Council's Biodiversity Offsets Policy).
- 1.8. Enable innovative approaches to the delivery of public infrastructure, services and facilities.

2. POLICY SCOPE

- 2.1. This policy applies to the negotiation, use and implementation of Planning Agreements concerning the Cessnock LGA.

3. POLICY STATEMENT

- 3.1. Council is committed to the equitable and transparent approach to the negotiation, development and management of Planning Agreements to facilitate the delivery of public infrastructure to meet the needs of the community.

4. FUNDAMENTAL PRINCIPLES

- 4.1. Council's use of Planning Agreements will be governed by the following fundamental principles outlined in the [Planning Agreements Practice Note](#):
 - 4.1.1. Planning authorities should always consider a development proposal on its merits, not on the basis of a planning agreement;
 - 4.1.2. Planning Agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand;
 - 4.1.3. Strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population;
 - 4.1.4. A consent authority cannot refuse to grant development consent on the grounds 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;

- 4.1.5. Planning Agreements should not be used as a means of general revenue raising or to overcome revenue short falls;
- 4.1.6. Planning Agreements must not include public benefits wholly unrelated to the particular development;
- 4.1.7. Value capture should not be the primary purpose of a planning agreement;

5. PUBLIC INTEREST AND PROBITY

5.1. Probity

- 5.1.1. Public probity is fundamentally important to Council as it will ensure that the negotiation of any Planning Agreements is fair, transparent and is directed at achieving Public Benefits in an appropriate manner, free of fraud and corruption.
- 5.1.2. In this regard, Council will:
 - a) Provide the Proponent with access to Council's Statement of Business Ethics.
 - b) Ensure that all stakeholders understand the Planning Agreement system and each party's role in negotiating a Planning Agreement.
 - c) Publicly notify Planning Agreements to ensure they are open and transparent and in accordance with relevant legislation and directives.
 - d) Actively promote public awareness of the matters contained in a Planning Agreement(s) and the potential benefits of an agreement.
 - e) Ensure appropriate delegations and separation of responsibilities are maintained when considering Development Applications that involve Planning Agreements.
 - f) Ensure that the role of Councillors, Council management and staff in negotiating Planning Agreements are clearly defined. This ensures any potential for conflict of interest within Council will be appropriately managed in accordance with Council's Code of Conduct Policy.
 - g) Take every step to ensure that conflicts of interest (actual and perceived) are declared, managed or mitigated, if not eliminated to the greatest extent possible.
- 5.1.3. If deemed applicable by the Local Infrastructure Contributions Steering Group, heads of agreement formally endorsed by the parties may be required. This can be the basis for drafting the Planning Agreement as a whole and be applied for other purposes in the interim such as reporting to the elected Council in conjunction with the relevant Planning Proposal.

5.2. Public participation and notification

- 5.2.1. Public participation in the Planning Agreement process is important to ensure the community has an opportunity to provide input in decisions being made relating to Public Benefit and development. Planning Agreements redistribute the costs and benefits of a development, and it is critical the public can comment on whether they think the balance between development and Public Benefit is achieved successfully.
- 5.2.2. Once the Planning Agreement has been negotiated and documented, it must be publicly notified and made available for public inspection before they can be

entered into in accordance with the Act and Regulation and any practice notes or directions released by the Department of Planning, Industry and Environment.

- 5.2.3. The Regulation requires that the notification of a proposed Planning Agreement occurs at the same time as the Planning Proposal or Development Application, or if this is not practicable, as soon as possible after.
- 5.2.4. The terms of the Planning Agreement and its proposed Public Benefits should be clearly shown as part of consultation material. This will help the community make a fully informed decision on the overall proposal.
- 5.2.5. Planning Agreements must be accompanied by an explanatory note to assist the public in understanding the agreement. Other types of consultation material are encouraged in addition to the Explanatory Note. This might include additional written material, diagrams or plans.
- 5.2.6. Council will publicly re-notify a proposed Planning Agreement if, in Council's opinion as advised by the Local Infrastructure Contributions Steering Group, the changes materially affect:
 - a) How any of the matters specified in section 7.4 of the Act are dealt with by the Planning Agreement.
 - b) Other key terms and conditions of the Planning Agreement
 - c) The Planning Authority's interest or public interest under the Planning Agreement;
 - d) Whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

5.3. Fraud Control and Corruption Prevention

- 5.3.1. Councillors and staff must meet high standards of integrity and accountability when negotiating Planning Agreements. Council has a responsibility to:
 - a) Protect taxpayer funded resources and assets from fraud and corruption; and
 - b) Ensure that our decisions and actions are free from fraud and corruption
- 5.3.2. In this respect all parties involved with negotiating a Planning Agreement will adhere to Council's [Fraud Control and Corruption Prevention Policy](#).

6. THE ACCEPTABILITY TEST

- 6.1. Planning Agreements should be assessed by the Local Infrastructure Contributions Planner against the acceptability test, which determines the acceptability of the Planning Agreement. The test requires that Planning Agreements:
 - 6.1.1. Are directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development

6.1.2. Provide for the delivery of infrastructure of –public benefits not wholly unrelated to the development;

6.1.3. Produce outcomes that meet the general values and expectations of the public and protect the overall public interest;

6.1.4. Provide for a reasonable means of achieving the desired outcomes and securing the benefits; and

6.1.5. Protect the community against adverse planning decisions.

7. CIRCUMSTANCES IN WHICH COUNCIL WILL CONSIDER THE NEGOTIATION OF A PLANNING AGREEMENT

7.1. Council at its complete discretion by the Local Infrastructure Contributions Steering Group may consider the negotiation of a Planning Agreement with a Proponent who has voluntarily offered to enter into such a Planning Agreement in association with a Planning Proposal or Development Application. All proposals for a Planning Agreement should begin prior to lodgement of any Planning Proposal or Development Application.

8. APPLICATION OF CESSNOCK LOCAL ENVIRONMENTAL PLAN (LEP) 2011 TO DEVELOPMENT TO WHICH A PLANNING AGREEMENT RELATES

8.1. Council will agree to having a provision in a Planning Agreement to justify a variation from applicable development standards, if and only if, Council is satisfied that the proposed matter of the Planning Agreement does in fact address the requirements of the Cessnock LEP in relation to the dispensation sought

9. NEGOTIATION, NOTIFICATION, EXECUTION AND FINALISATION OF PLANNING AGREEMENTS

9.1. All planning agreements will be negotiated by the Senior Infrastructure Contributions Planner in accordance with this Policy, Council’s Planning Agreement Guidelines and relevant templates, EP&A Act and EP&A Regulations together with any Ministerial Direction or Practice Note.

10. STRATEGIC CONSIDERATION

10.1 Prior to the acceptance of any planning agreement, the Senior Infrastructure Contributions Planner and Strategic Planning Manager will undertake a strategic review to ensure that the proposal will be delivered in accordance with Council’s [Strategic Planning Statement](#).

11. RESPONSIBILITIES

11.1 Strategic Planning Manager

11.1.1 The Strategic Planning Manager is responsible for:

- a) overseeing and supporting relevant Council staff in the negotiation of Planning Agreements; and

- b) the implementation of this policy.

11.2 Local Infrastructure Contributions Steering Group Committee

11.2.1 The Local Infrastructure Contributions Steering Group is responsible for:

- a) reviewing and approval of entering into a negotiation of planning agreements including, but not limited to, reviewing the proposed offer and approving the planning agreement;
- b) approval of heads of agreement is required; and
- c) whether notification will be required.

11.3 Senior Infrastructure Contributions Planner

11.3.1 The Senior Infrastructure Contributions Planner is responsible for;

- a) the negotiation of the planning agreement with the proponent;
- b) reporting to the Local Infrastructure Contributions Steering Group, Strategic Planning Manager and Council.

12. COMPLIANCE, MONITORING AND REVIEW

12.1 All compliance, monitoring and review of a planning agreement is to be conducted in accordance with the detail contained in the individual planning agreement, the Act, the Regulations, Council's guide and any direction from the Department of Planning, Industry and Environment.

12.2 Reporting

12.2.1 After adoption by Council any future reporting will be in accordance with the terms of the Planning Agreement, the Act and Regulations and any direction made by the Department of Planning, Industry and Environment.

12.3 Records management

12.3.1 Staff must maintain all records relevant to administering this policy in accordance with Council's [Records Management Policy](#).

13. POLICY DEFINITIONS

Term	Definition
Act	Means the Environmental Planning and Assessment Act 1979 .
Agreed Value	Means the cost of the works to be delivered as agreed between all parties to the agreement.
Agreed Works	Means works to be delivered as agreed between all parties to the agreement.
Consent	The Development Consent that has initiated the negotiations for a planning agreement or Works in Kind.
Contributions Offset	The dedication of land and/or the construction of infrastructure required as part of Council's Section 64 Development Servicing Plans.
Council	Means Cessnock City Council.
Development Application (DA)	Has the same meaning as in the Environmental Planning and Assessment Act 1979 .
Development Consent	Has the same meaning as in the Environmental Planning and Assessment Act 1979 .
Development Contribution	Means the provision made by a Proponent under a planning agreement being a monetary contribution, the dedication of land free of cost or the provision of a Material Public Benefit, or any combinations of the above.
Environmental Planning Instrument	Means an environmental planning instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 (of the Act) and in force.
Explanatory Note	Means a written statement that provides details of the objectives, nature, effects and merits of a planning agreement or an amendment to, or revocation of, a planning agreement.
Instrument Change	Means a change to an Environmental Planning Instrument to facilitate development which is the subject of a planning agreement.
Material Public Benefits	Consist of some physical (material) component, other than land dedication or monetary contribution, in settlement of the contributions levied upon the development consent, but does not include works nominated in a Contribution Plan's Work Schedule.
Plan	The applicable Section 7.11 Contribution Plan or Section 64 Development Servicing Plan, depending upon the infrastructure within the Application Works in Kind Policy.
Planning Benefit	Means 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;
Proponent	Means a person who has sought a change to an Environmental Planning Instrument through the lodgement of a Planning Proposal or who has submitted or proposes to lodge a development application – or, by formal agreement, is a representative of an applicant for such changes
Planning Agreement	Means a voluntary agreement or other arrangement between a planning authority and a developer who has sought a change to an environmental planning instrument or made or proposes to make a development application or application for a complying development certificate under which the developer is required to dedicate the land free of cost, pay a monetary contribution, provide other material benefit or a combination of all to be used or applied towards a public purpose.

Planning Authority	has the same meaning as in Division 7.1 of Part 7 of the EP&A Act, and means: <ul style="list-style-type: none"> • a council, or • the Minister for Planning, or • the Planning Ministerial Corporation, or • a development corporation (within the meaning of the Growth Centres (Development Corporations) Act 1974), or • a public authority
Planning Obligation	Means an obligation imposed by a planning agreement on a Proponent requiring the Proponent to make a development contribution
Planning Proposal	Means a proposed change to the Cessnock Local Environmental Plan 2011 – a change to an Environmental Planning Instrument - to enable a development subject of an application to be made permissible and to carry out the development subject of the development application and planning agreement;
Practical Completion	Developer Works or a specified part of the Developer Works, occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the specified part.
Practice Note	Means any Practice Notes on Development Contributions published by the Department of Planning, Environment and Infrastructure.
Public	Includes a section of the Public;
Public Benefit	Means the benefit enjoyed by the public as a consequence of development contribution;
Public Facilities	Means public infrastructure, facilities, amenities and services
Public Purpose	Includes: <ul style="list-style-type: none"> • Provision of, including recoupment of, the cost of public amenities or public services; • Provision of, including recoupment of, the cost of affordable housing; • Transport or other infrastructure relating to land; • Funding of recurrent expenditure relating to the provision of public amenities of public services, affordable housing or transport or other infrastructure; • Monitoring of the planning impacts of development; and • Conservation or enhancement of the natural environment;
Regulation	Means the <u>Environmental Planning and Assessment Regulation 2000</u>
Surplus Value	Means the value of the Proponents' provision under a planning agreement more than the sum of the value of public works required to be carried out by the Proponent under a condition imposed under Section 4.17 (1) of the Act and the value of Development Contributions that are or could have been required to be made under Section 7.11 or Section 7.12 of the Act in respect of the development subject of the planning agreement.
Works In Kind	Is the undertaking of work, or the provision of a facility, or the dedication of land as nominated in the Planning Agreements work schedule and includes reference to contribution offsets.
Works In Kind Application	An application for Works in Kind, Material Public Benefit, contribution offsets or combinations thereof.
Works In Kind Agreement	A formal agreement that must be entered into with Council following Council approval of an Application under this policy.

14. POLICY ADMINISTRATION

Business Group	Planning and Environment
Responsible Officer	Strategic Planning Manager
Responsible Author	Senior Infrastructure Contributions Planner
Associated Procedure (if any, reference document(s) number(s))	External User Guide DOC2020/184111
Policy Review Date	Three years from date of adoption unless legislated otherwise
File Number / Document Number	Authority ID: 57/2014/4/2 DOC2020/163184
Relevant Legislation (reference specific sections)	<ul style="list-style-type: none"> ▪ Subdivision 2 of Division 7.1 of Part 7 of the Act; ▪ Division 1A of Part 4 of the Regulation; ▪ Planning Agreement Practice Note – February 2021; and ▪ Schedule 1 of the GIPA Regulation
Relevant desired outcome or objectives as per Council's Delivery Program	<p>A Sustainable & Healthy Environment Objective 3.1 Protecting & enhancing the natural environment and the rural character of the area.</p> <p>Civil Leadership & Effective Governance Objective 5.3: Making Council more responsive to the community.</p>
Related Policies / Protocols / Procedures / Documents (reference document numbers)	<ul style="list-style-type: none"> ▪ Records Management Policy (DOC2019/038769) ▪ Strategic Planning Statement (DOC2018/087261) ▪ Fraud Control and Corruption Prevention Policy (DOC2020/027334)

15. POLICY AUTHORISATIONS

No.	Authorised Function	Authorised Business Unit / Role(s)
	Negotiation of Planning Agreements	Senior Infrastructure Contributions Planner

16. POLICY HISTORY

Revision	Date Approved / Authority	Description Of Changes
1	15 November 2017 PE61/2017	New Policy Adopted
2	25 May 2020	First periodic review of the policy

17. APPENDICES

Item	Document No	Name of document
A	DOC2020/167148	Planning Agreement & Explanatory Note Template
B	DOC2016/037967	Works in Kind Template