

Singleton Council

Planning Agreement Policy

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Planning Agreements Policy

1 Background

1.1 Name of Policy and commencement

- (1) This policy sets out Singleton Council's (**Council**) policy and procedures relating to planning agreements under the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**) entered into by Council.
- (2) This policy was adopted by resolution of Council on [insert date].

1.2 Introduction

Council has adopted this policy in order to provide developers and the community with an understanding of the objectives, principles and procedures applying to the preparation of, and entry into, planning agreements.

1.3 Objectives

The objectives of this policy are:

- (1) to establish an efficient, fair, transparent and accountable framework governing the development and use of planning agreements by Council;
- (2) to set out the Council's specific policies and procedures relating to the use of planning agreements;
- (3) to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public facilities, services and programs;
- (4) to facilitate greater flexibility in the provision of development contributions within Council's local government area through the use of planning agreements;
- (5) to provide a framework within which all stakeholders in development are provided with a greater opportunity for involvement in determining the type, standard and location of public facilities, services, programs and other public benefits; and
- (6) to set out procedures relating to the use of planning agreements within Council's Local Government Area.

1.4 What does this Policy set out?

This policy sets out Council's approach to the use of planning agreements through negotiation. Such Planning Agreements may be entered into with respect to rezoning of land, development applications, other developments with respect to which Council is not the approval authority within the Singleton Local Government area, or in any other circumstances permitted under the Act.

In particular:

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- (1) the circumstances in which the Council would ordinarily consider entering into a planning agreement;
- (2) the matters ordinarily covered by a planning agreement;
- (3) the form of development contributions ordinarily sought under a planning agreement;
- (4) the kinds of public benefits ordinarily acceptable to Council and whether they involve a planning benefit;
- (5) the procedures for negotiating and entering into planning agreements; and
- (6) the Council's policies on other matters relating to planning agreements.

1.5 Nature of a planning agreement

- (1) A planning agreement is a voluntary agreement entered into under Subdivision 2 of Division 7.1 of Part 7 of the EPA Act between Council and a person:
 - (a) who has sought a change to an environmental planning instrument;
 - (b) who has made, or proposes to make, a development application; or
 - (c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,under which the person 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.
- (2) For the purpose of a planning agreement, a public purpose includes (without limitation) any of the following:
 - (a) the provision of (or the recoupment of the cost of providing) public amenities, public services, affordable housing, and transport or other infrastructure relating to land;
 - (b) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
 - (c) the monitoring of the planning impacts of development;
 - (d) the conservation or enhancement of the natural environment; and
 - (e) any other public purposes set out in section 7.4(2) of the EPA Act, as amended from time to time.

1.6 Circumstances in which planning agreement may be negotiated

- (1) Council may negotiate a planning agreement with a person in connection with:
 - (a) a change that person has sought to an environmental planning instrument; or

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- (b) any application for development consent by that person, or by someone associated with the person,

relating to any land within Council's Local Government Area.
- (2) Council is under no obligation to:
 - (a) enter into negotiations with any person with respect to a planning agreement; or
 - (b) to enter into a planning agreement offered by a proponent.

1.7 Not legally binding

- (1) By their very nature, planning agreements are flexible arrangements which can vary greatly depending on the nature and extent of the proposed development, and/or the nature and extent of the public benefits being provided.
- (2) Accordingly, Council needs to ensure that its procedure with respect to the negotiation and formation of planning agreements is flexible.
- (3) In order to ensure that flexibility, this policy is not legally binding and Council is not bound to strictly apply this policy for every planning agreement entered into by Council. However, Council will generally seek to apply this policy, as far as reasonably practicable, in relation to planning agreements.

2 Legal and policy context

2.1 Framework

- (1) Council's current legal and procedural framework for planning agreements consist of:
 - (a) Part 7, Division 7.1, Subdivision 2 of the EPA Act;
 - (b) Part 4, Division 1A of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**Regulation**);
 - (c) the *Singleton Local Environmental Plan 2013*;
 - (d) the *Singleton Development Contributions Plan 2008*; and
 - (e) this policy,(each as amended from time to time).
- (2) Council will also be guided by the Practice Note entitled "*Planning Agreements Practice Note – Exhibition Draft*" (April 2020) issued by the NSW Department of Planning, Industry and Environment (**Practice Note**) for the purposes of clause 25B of the Regulation. If there is any inconsistency between that Practice Note and this policy, then Council will be guided by this policy to the extent of that inconsistency.

2.2 Mandatory requirements of a planning agreement

Section 7.4(3) of the EPA Act requires planning agreements to provide for those matters set out in Part 1 of **Schedule 1** of this policy.

2.3 Template Planning Agreement

- (1) A template planning agreement is attached as **Annexure 1**. This template will be used by Council as the basis of any proposed planning agreement to be entered into between Council and a Developer (unless Council decides otherwise).
- (2) Council does not require the mandatory use of its template planning agreement, however:
 - (a) use of that template is anticipated to make the negotiation of any planning agreement more efficient; and
 - (b) any departure from Council's template will need to be justified by the relevant proponent having regard to the circumstances of the relevant matter.

2.4 Restrictions on the content of planning agreements

- (1) Section 7.4(9) of the EPA Act precludes a planning agreement from imposing an obligation on Council to:
 - (a) grant development consent; or
 - (b) exercise a function under the EPA Act in relation to a change to an environmental planning instrument.
- (2) Section 7.4(10) of the EPA Act provides that a planning agreement is void to the extent to which it authorised anything to be done in breach of the EPA Act, an environmental planning instrument or a development consent to the land to which the agreement applies.
- (3) However, except as provided by law, the EPA Act does not preclude a planning agreement containing other provisions that may be necessary or desirable in particular cases.

2.5 The use of an Explanatory Note

- (1) Clause 25E(1) of the Regulation requires Council to prepare, in conjunction with the other parties to the planning agreement, an Explanatory Note which must then be exhibited with the copy of the proposed planning agreement when that agreement is made available for inspection by the public in accordance with the Act.
- (2) An explanatory note must:
 - (a) summarises the objectives, nature and effect of the proposed planning agreement; and
 - (b) contains an assessment of the merits of the proposed planning agreement including the impact (positive or negative) on the public or any relevant section of the public.
- (3) Further details of the matters that must to be addressed in an Explanatory Note are set out in Part 2 of **Schedule 1**.

- (4) A template Explanatory Note is attached as **Annexure 2**. This template will be used by Council in relation to any proposed planning agreement exhibited by Council.

3 Principles for planning agreements

3.1 Principles

- (1) Council's use of planning agreements will be governed by the following fundamental principles:
- (a) Planning agreements are not a mechanism through which planning decisions can be 'bought or sold'. In particular a planning agreement will not be accepted by Council as a means of permitting development that is not acceptable on planning grounds.
 - (b) Council will never allow planning agreements to improperly fetter the exercise of its statutory functions under the EPA Act, the Regulation, the *Roads Act 1993* (NSW), the *Local Government Act 1993* (NSW) or any other Act or law.
 - (c) Council will only use planning agreements for a proper planning purpose.
 - (d) Council will generally only accept benefits under a planning agreement that are related to the development to which the planning agreement applies, however it has a discretion to accept other benefits after considering the matters set out in this policy, and in particular in clause 3.2.
 - (e) When considering:
 - (i) a change to an environmental planning instrument; or
 - (ii) a development application,to which a proposed planning agreement relates, Council will not:
 - (iii) take into consideration public benefits proposed to be provided in a planning agreement that are wholly unrelated to the proposed development; or
 - (iv) give disproportionate weight to a proposed planning agreement.
 - (f) Council will give primary consideration to the public interest when considering a planning agreement and will not allow that interest to be outweighed by the interests of individuals or interest groups.
 - (g) Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from proponents under a planning agreement.
 - (h) Planning agreements will not be allowed to be used for any purpose other than for a planning purpose.
 - (i) Council will not enter into any planning agreement that is unrelated to a particular development or planning proposal.

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- (j) Council will not give any preferential treatment to proponents with development applications or planning proposals that require planning agreements.
- (2) Council may also apply the following acceptability tests (as set out in the Practice Note) in making an assessment as to whether planning obligations are appropriate and to ensure that a planning agreement:
 - (a) is directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development;
 - (b) provide for the delivery of infrastructure, services, programs or public benefits not wholly unrelated to the development;
 - (c) produces outcomes that meet the general values and expectations of the community and protect the overall public interest;
 - (d) provides for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits; and
 - (e) protects the community against planning harm.

3.2 Matters that Council may consider

The criteria that Council may take into account when considering whether or not to negotiate a planning agreement with a developer includes but is not limited to the following:

- (1) Whether planning benefits for the wider community accrue from the planning agreement.
- (2) Whether the public benefits proposed to be provided under the planning agreement meet:
 - (a) the demands created by the development for new public infrastructure, amenities, services; and
 - (b) the planning objectives of Council.
- (3) Whether an existing deficiency in the provision of public facilities, services, and programs in the Council's local government area is rectified through the planning agreement.
- (4) Whether 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.
- (5) The financial impost on Council arising as a result of the provision of the public benefits under the planning agreement, including but not limited to:
 - (a) the financial burden on Council with respect to the management and maintenance of any land and facilities provided; and
 - (b) whether recurrent funding of those facilities is required or provided.
- (6) The extent to which Council needs to monitor the planning impacts of development.

3.3 Form of development contributions

- (1) The form of development contributions to be provided under a planning agreement will be determined on a case by case basis depending on:
 - (a) the particulars of the proposed change to the environmental planning instrument or development application to which the proposed planning agreement relates; and
 - (b) the identified need for further public benefits.
- (2) Development contributions under a planning agreement will generally take one (1) of the following forms:
 - (a) Payment of a monetary contribution.
 - (b) The dedication of land.
 - (c) The provision of public works or infrastructure.

3.4 Mining operations

- (1) For any planning agreement which relates to mining operations, Council will generally require the payment of a monetary contribution which may be used by Council as part of the Singleton Community and Economic Development Fund adopted by Council at its meeting on 16 December 2019 (**SCEDF**).
- (2) The purpose for which any such monetary contribution may be applied by Council under paragraph (1) will include, but not be limited to, any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in section 7.4(2) of the EPA Act. This includes any such purpose which proactively manages the impacts of mining to secure a prosperous and enjoyable future for residents of the Singleton LGA in accordance with the Policies of the SCEDF, which in turn includes (but is not limited to) the following purposes:
 - (a) Fostering business and job creation.
 - (b) Education and training.
 - (c) Sports and recreation.
 - (d) Homelessness and mental health.
 - (e) Infrastructure.
 - (f) Environmental Sustainability.
- (3) Ultimately the public benefits for which any such contribution are used will be determined by Council.
- (4) In terms of the value of the material public benefits that Council will agree to accept in a Planning Agreement which relates to mining operations, Council may adopt separate policies, or pass separate resolutions, from time to time.
- (5) As at the date of this Policy:

- (a) the Resolution of Council passed on 20 November 2017 (as amended or replaced from time to time) is relevant to Council's consideration of benefits offered in a Planning Agreement; and
- (b) it is Council's policy to calculate any relevant capital investment value having regard to PS10-008 or PS13-002 (as the case may be).

3.5 Methodology for value of public benefits

- (1) The valuation of the public benefits to be provided under a planning agreement are an important component of any such agreement.
- (2) There are numerous methods of determining such values and the methodologies for valuing the public benefits set out in this section are to be used as a general guide only. Accordingly Council is not bound to follow such methodologies but may elect to do so on a case by case basis.
- (3) Where a public benefit to be provided under a planning agreement is the dedication of land for a public purpose by the developer, Council may seek to value the benefit on the basis of the estimated amount of compensation to which the developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) upon the compulsory acquisition of the land or by engaging an independent valuer.
- (4) Where a public benefit to be provided under a planning agreement is the carrying out of works for a public purpose, Council will generally seek to value the benefit on the basis of the estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.
- (5) Where a public benefit to be provided under a planning agreement is the provision of a material public benefit other than the carrying out of works, Council and the developer will negotiate the most appropriate manner by which the benefit is to be valued for the purposes of the agreement.
- (6) Council will generally adopt the following approach to valuation of benefits in connection with any planning agreement:
 - (a) the value of a benefit must be provided by the developer at an appropriate time, together with a written verification of that valuation by an appropriately qualified independent expert; and
 - (b) Council may review the valuation, including by engaging an independent expert and Council's costs incurred in connection with such review may also need to be borne by the developer.
- (7) Council will generally seek to ensure that monetary contributions required to be paid under a planning agreement are increased by reference to an appropriate index (such as the consumer price index) from the time of the formation of the planning agreement until the relevant monetary contribution is paid.

3.6 Recurrent charges

- (1) Planning agreements may require a developer to make contributions towards the recurrent cost of public facilities, services or programs.

- (2) The nature and extent of any recurrent charges will be determined on a case by case basis, however the following general principles will apply:
 - (a) Where the public facility primarily serves the development to which the planning agreement relates, or neighbouring development, the arrangement for recurrent funding may be in perpetuity.
 - (b) Where the public benefit is intended to serve the wider community, the planning agreement may require the developer to make contributions towards the recurrent costs of the facility for a set period only which will be negotiated according to the assessed impact of the development.

3.7 Pooling of monetary contributions

- (1) Pooling of monetary contributions paid under different planning agreements may be appropriate to allow public benefits, particularly essential infrastructure and ongoing services, to be provided in a fair and equitable way.
- (2) A planning agreement may therefore provide for the payment of monetary contributions to be provided by the developer with the intention that those contributions be pooled with others received by Council.
- (3) In such an instance, Council may seek to include a provision in the planning agreement which permits:
 - (a) money paid under the planning agreement to be pooled with money paid under other planning agreements; and
 - (b) for that money to be applied progressively and for different purposes under those agreements.
- (4) If significant pooling is required Council may consider if a s7.11 of the EPA Act infrastructure contributions plan would be appropriate.

3.8 Other development contributions

- (1) A planning agreement may or may not exclude the operation of s7.11, s7.12 and/or s7.24 of the Act with respect to the development to which the planning agreement relates.
- (2) Council has no general policy on whether a planning agreement should exclude the application of s7.11 or s7.12 of the EPA Act with respect to the development to which the planning agreement relates.
- (3) Council will negotiate any such exclusion as part of the negotiation of the planning agreement generally having regard to the particular circumstances of the proposed change to an environmental planning instrument or the proposed development.
- (4) Where the application of s7.11 of the EPA Act is not excluded, Council will generally not permit any material public benefits provided under the planning agreement to be:
 - (a) taken into consideration when imposing a development contribution to be imposed under s7.11 of the EPA Act; or

- (b) used to off set any contribution imposed under s7.11 of the EPA Act, unless the relevant material public benefit provided under the planning agreement is agreed by Council in the planning agreement to satisfy any such contribution.
- (5) Council will not agree to a planning agreement excluding the operation of s7.24 of the EPA Act unless the Minister or the appropriate development corporation approves that exclusion.

3.9 Legal costs of negotiating planning agreements

- (1) As a general rule, a proponent will need to pay Council's legal costs and disbursements incurred in relation to the drafting, negotiation, execution and registration (if applicable) of the planning agreement.
- (2) A planning agreement may also be needed to make provision for Council's costs for the monitoring and enforcing of the planning agreement to be borne by the developer. This may include an obligation on the proponent to provide security to the Council for those costs.

3.10 Refunds and credits

Council generally will not agree to:

- (1) making a refund of, or providing any credits with respect to, any contributions provided under;
- (2) a planning agreement providing for the surplus value of the public benefits provided under a planning agreement to be refunded to the developer; or
- (3) a planning agreement providing for the surplus value of the public benefits provided under a planning agreement to be offset against development contributions required to be made by the developer in respect of any further development,

including in circumstances where the value of the material public benefits provided under a planning agreement exceed the value of the contributions that would otherwise have been required to be paid under the relevant s94 Contributions Plan.

3.11 Contributions Plan

- (1) The *Singleton Development Contributions Plan 2008* is the current contributions plan adopted by Council.
- (2) This document could be a starting point for developers to understand the types of facilities that could be negotiated under a planning agreement.
- (3) It is also recognised that the planning benefits proposed for any development may differ from those identified in the Contributions Plan.
- (4) Negotiations for each planning agreement will reflect the circumstances of each individual case.

4 Negotiation procedures and probity

4.1 Introduction

- (1) Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable.
- (2) In this regard, the process set out in this policy is based on principles of fairness, co-operation, full disclosure, early warning and agreed working practices and timetables.

4.2 Timing of negotiations

- (1) Council will seek to ensure that the final negotiation of planning agreements runs in parallel with:
 - (a) the making of the relevant change to an environmental planning instrument; or
 - (b) the consideration of the relevant development application,so as not to unduly delay the relevant matter.
- (2) A summary of the steps generally involved with respect to the negotiation process is set out in **Schedule 2** of this policy. Council will ensure that all negotiations with a proponent and their consultants are sufficiently separated and documented.
- (3) Council's preference is therefore to have the planning agreement negotiated and documented before it is publicly notified as required by the EPA Act and the Regulations.
- (4) No planning agreement will become binding until it is approved by a resolution of Council and entered into in accordance with the EPA Act and the Regulations.

4.3 Council's representative

- (1) A Council officer or officers with appropriate delegated authority will negotiate a planning agreement on behalf of the Council. Council may 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.
- (2) Councillors will not be involved in the face to face negotiation of a planning agreement but will ultimately be responsible for the approval or rejection of the agreement as part of their duties as councillors.

4.4 Separation of commercial and planning assessment roles

In the negotiation of a Planning Agreement, Council will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development.

4.5 Probity

- (1) Probity is important to Council and it will therefore ensure that the negotiation of any planning agreement is fair and transparent and is directed at achieving public benefits in an appropriate manner.
- (2) Council will:
 - (a) inform any applicant about Council values and business ethics – specifically, about ethical behaviour appropriate to business dealings;
 - (b) endeavour to ensure that the system and the Council's role in relation to planning agreements is well understood;
 - (c) notify and exhibit planning agreements to ensure they are open and transparent;
 - (d) ensure appropriate delegations and separation of responsibilities in considering development applications that involve planning agreements;
 - (e) ensure that modifications to approved development, where appropriate, are subject to the same scrutiny as the original development application; and
 - (f) take steps to ensure that conflicts of interest are ameliorated to the greatest extent possible.

5 Public notice

5.1 Public notification

- (1) Section 7.5(1) of the EPA Act precludes a planning agreement from being entered into, amended or revoked unless public notice is given of the proposed agreement, amendment or revocation.
- (2) A planning agreement must be publicly exhibited and available for public exhibition in accordance with the Regulations.
- (3) Further details of the notification process are set out in **Schedule 3** of this policy.

5.2 Submissions by the public

Any person may make a written submission on the draft planning agreement. Council encourages written submissions on draft planning agreements so Council can better understand the needs, desires and/or concerns of the community with respect to the proposed planning agreement.

5.3 Re-notification

- (1) Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in the 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.
- (2) Such a change may arise as a consequence of public submissions made in respect of the previous public notification, or for any other reason.

5.4 Minister to be notified

If the Minister is not a party to a planning agreement, Council will provide to the Minister a copy of the planning agreement within fourteen (14) days after the agreement (including any amendment or revocation of that agreement) is entered into.

6 Other procedures

6.1 Entry into planning agreement

- (1) A planning agreement is entered into when it is signed by all of the parties to it.
- (2) A planning agreement can be entered into at any time after the agreement is publicly notified in accordance with the EPA Act and Regulation.
- (3) However Council will usually require a planning agreement to be entered into as a condition of the development consent for the development to which the planning agreement relates.

6.2 Provision of security under planning agreement

- (1) Council will require every planning agreement entered into by it to contain appropriate provisions which allow for the enforcement of the planning agreement by suitable means in the event of a breach of the planning agreement by the proponent.
- (2) In this regard and subject to section 6.3 of this Policy, Council may require a planning agreement to contain a provision requiring the developer to:
 - (a) undertake the registration of the agreement on the land to which it applies pursuant to s7.6 of the EPA Act; and/or
 - (b) provide security in the form of a bank guarantee or bond for some or all of the obligations of the proponent under the planning agreement.
- (3) The nature and extent of the enforcement provisions in the planning agreement will be a matter for negotiation between Council and the developer having regard to the particular circumstances of the planning agreement.

6.3 Provision of security under planning agreements which relate to mining operations

Where a planning agreement relates to mining operations, Council may require the developer to:

- (1) undertake the registration of the planning agreement on land which is crucial to the operation of the relevant mine pursuant to s7.6 of the EPA Act (rather than on the land to which the planning agreement applies as a whole);
- (2) pay monetary contribution upon execution of the planning agreement so as to alleviate the need for any additional security to be provided by the developer; and/or
- (3) provide security in the form of a bank guarantee or bond for some or all of the obligations of the proponent under the planning agreement (in particular

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where payment of monetary contributions are proposed on a staged basis rather than upfront under paragraph (2)).

6.4 Planning agreement register

- (1) Council is required to keep a register of planning agreements (including the related explanatory notes) applying to land within its local government area. The planning agreement register will indicate:
 - (a) the date in which the planning agreement was entered into; and
 - (b) a brief description of the planning agreement itself.
- (2) The planning agreement register will be available for public inspection (free of charge) at Council's Customer Service Centre, during normal office hours.

6.5 Changes in law

The procedures, requirements and other matters addressed within this policy may be subject to change as a result of changes in the law.

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Schedule 1: Mandatory requirements of a planning agreement

Part 1: Planning Agreements

Section 7.4(3) of the EPA Act requires planning agreements to include provisions containing the matters set out in the table below:

Requirements under the EPA Act for Planning Agreements
<input type="checkbox"/> A description of the land to which the agreement applies.
<input type="checkbox"/> A description of: (1) the change to the environmental planning instrument to which the agreement applies, or (2) the development to which the agreement applies.
<input type="checkbox"/> The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made.
<input type="checkbox"/> In the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11 or 7.12 to the development.
<input type="checkbox"/> If the agreement does not exclude the application of section 7.11 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11.
<input type="checkbox"/> A mechanism for the resolution of disputes under the agreement.
<input type="checkbox"/> The enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

Part 2: Explanatory Note

Clause 25E(2) of the Regulation requires explanatory notes to include provisions containing the matters set out in the table below:

Requirements under the Regulation for Explanatory Notes
<input type="checkbox"/> Identify how the planning agreement promotes the public interest and one or more of the objects of the Act.
<input type="checkbox"/> Summary of the objectives, nature and effect of the proposed planning agreement.
<input type="checkbox"/> An assessment of the merits of the proposed planning agreement including the impact (positive or negative) on the public or any relevant section of the public.
<input type="checkbox"/> Identify how the planning agreement promotes one or more of Council's Guiding Principles as set out in the <i>Local Government Act 1993</i> (NSW).
<input type="checkbox"/> Identify a planning purpose or purposes served by the planning agreement and contain an assessment of whether the agreement provides for a reasonable means of achieving

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that purpose.

☐ Identify whether the planning agreement conforms with Council's capital works program (if any).

☐ State whether the 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.

Schedule 2: Summary of negotiation process

The negotiation of a planning agreement other than with respect to State significant development will generally involve the following key steps: The process with respect to Planning Agreements entered into with respect to State significant development will follow the below if possible, but will be dictated by the relevant process required by the Department of Planning, Industry and Environment.

- (1) Planning agreement negotiations should commence early in the planning application process. As part of application pre-lodgement discussions, the parties will decide whether to commence negotiation of a planning agreement and if so, the general scope and content of the planning agreement.
- (2) The parties to a planning agreement will include Council and the developer and, if the developer is not the owner of the land the subject of the planning agreement, the land owner. The parties may also include another planning authority.
- (3) The parties will each appoint a person(s) to represent them in the negotiations. Another person will be appointed to record minutes of all negotiations. The parties will decide if an independent facilitator should be appointed to conduct or assist in negotiations. Minutes of all negotiation meetings will be distributed to all parties.
- (4) Council's negotiations will be led by an officer given delegated authority by the elected Council. Other Council officers may also be involved in the negotiation process.
- (5) The participants will identify the issues for negotiation and undertake the negotiations. If the planning agreement relates to mining operations, then the template provisions within the VPA which relate to mining operations should be relied upon, and any sections of this Policy relating to the SCEDF and mining operations should be addressed as part of the negotiations. If agreement is reached, a draft planning agreement will be prepared. The parties will decide who will prepare the agreement.
- (6) When the agreement is ready, a copy of the draft will be provided to the parties for review. Further negotiation and adjustment of the terms contained in the agreement occur at this stage. When the content of the draft agreement is agreed, the planning agreement is suitable for lodgement.
- (7) The developer should then submit the planning proposal or development application to the Council, accompanied by the planning agreement and the explanatory note. The application should state the offer by the developer to enter into the planning agreement.
- (8) The planning agreement will be publicly exhibited together with the proposed planning proposal or development application. This is in accordance with the requirements of the EPA Act and the Regulation. Any person may make a submission on the planning agreement.
- (9) The planning agreement may be subject to further negotiation between the parties to consider any issues that result from the public exhibition. This may result in the planning agreement being modified. If the modifications are considered to be significantly different to those in the original draft, the document will be publicly exhibited again.
- (10) Council will consider the planning agreement and the application to which it relates concurrently. The agreement and public submissions made in relation to that

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agreement will be matters for consideration in the determination of the planning proposal or development application. A determination will then be issued.

- (11) Where the planning agreement relates to a development application, and the application is approved, a condition of consent will be imposed requiring the planning agreement to be entered into between the parties. Where the agreement relates to a planning proposal, the Council will resolve that the planning agreement be entered into before the relevant local environmental plan amendment is made.
 - (12) The planning agreement is entered into when it is signed by all the parties. The agreement comes into effect at the time stated in the agreement.
 - (13) Council will keep a register of all planning agreements applying to land within its area, including agreements that the council may not be a party to (for example agreements where the consent authority may be the State or Federal Government). The register will record the date and agreement was actioned and a short description of the agreement, including any subsequent amendments.
 - (14) Developments that have been approved with a planning agreement in place, may be the subject of an application to modify the development consent. If the application materially affects the terms of the agreement, a new modified planning agreement may need to be prepared. The agreement will then be publicly exhibited and considered by Council in the same way as a new planning agreement.
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Schedule 3: Public notification process

The Regulation provides further processes to be followed by Council with respect to the public notification process. The public notice of a proposed agreement must specify the arrangements relating to inspection by the public of copies of the proposed agreement.

Development application
<p>If Council proposes to enter into a planning agreement in connection with a development application, Council is to ensure that public notice of the proposed agreement is given:</p> <ol style="list-style-type: none">(1) if practicable, as part of and contemporaneously with, and in the same manner as, any notice of the development application that is required to be given by Council for a development application under the EPA Act; or(2) if it is not practicable for notice to be given contemporaneously, as soon as possible after any notice of the development application that is required to be given by Council for a development application by or under the EPA Act.
Where change to planning instrument is involved
<p>Where Council proposes to enter into a planning agreement in connection with a proposed change to a local environmental plan, Council is to ensure that public notice of the proposed agreement is given:</p> <ol style="list-style-type: none">(1) if practicable, as part of and contemporaneously with, and in the same manner as, any public notice of the relevant planning proposal that is required under Part 3 of the EPA Act; or(2) if it is not practicable for notice to be given contemporaneously, as soon as possible after any public notice of the relevant planning proposal that is required under Part 3 of the EPA Act.

Annexure 1 - Template Planning Agreement

Annexure 2 - Template Explanatory Note
