



Planning Agreement Policy

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1. Introduction

This Policy applies to all voluntary planning agreements (~~VPAs~~) proposed or entered into by Council and applies to all the land in the Port Macquarie-Hastings local government area (LGA).

A ~~planning agreement VPA~~ is an ~~an~~ ~~voluntary~~ agreement entered into between a planning authority, and a developer in connection with a planning proposal or development application for:

- a. the dedication of land to Council
- b. the provision of a monetary contributions
- c. construction of public infrastructure
- d. provision of material public benefit
- e. any combination of the above

~~Planning agreements VPAs~~ provide an efficient means of increasing and broadening the range of community infrastructure associated with developments in the Port Macquarie-Hastings Local Government Area (LGA). ~~Planning agreements VPAs~~ also offer considerable flexibility to both the proponent and Council.

~~Planning agreements VPAs~~ can either exclude the payment of section 7.11 or 7.12 contributions or the ~~planning agreement VPA~~ can provide for benefits in addition to the payment of developer contributions.

Generally, Council will not accept any offers to pay amounts that are already required to be provided under Section 7.11 or Section 7.12. That is, the offer must provide a benefit over and above what is already required to be paid.

Where a proponent offers to carry out specific works set out in a contributions plan, a Works-in-Kind Agreement is the Council's preferred method to provide for the delivery of that infrastructure, rather than a ~~planning agreement VPA~~.

In determining whether to accept an offer to enter into a ~~planning agreement VPA~~, Council is required to take into consideration a number of matters, including whether the overall proposal by the developer will result in a Net Public Benefit.

2. Purpose

This Policy sets out Council's position and procedures relating to ~~planning agreements VPA~~ under the Act and Regulation.

Section 7.4 of the Act enables Councils to enter into ~~planning agreement VPA~~ with proponents of a rezoning or development application. Planning Agreements are voluntary and the acceptance of any offer to enter into a ~~planning agreement VPA~~ is at the discretion of Council.

A ~~planning agreement VPA~~ can be offered in connection with any of the following:

1. Instrument Change
2. Development Application
3. Modification Application.

If the offer is accepted by Council, the ~~planning agreement VPA~~, can then the developer may be required to:

- a. dedicate land free of cost;
- b. pay a monetary contribution;

- c. provide any other material public benefit; or
- d. provide any combination of the above to be used or applied for a public purpose.

The Practice Note is the guiding document used in the preparation of this Policy, however this Policy has also been prepared with regard to the ~~draft Local~~ Planning Agreements Practice Note – ~~December 2023~~ May 2025.

This Policy applies to any Development Application, Modification Application or a Planning Proposal where a ~~planning agreement~~ ~~VPA~~ is offered by the Developer within the Port Macquarie-Hastings LGA.

Council's preference is for a ~~planning agreement~~ ~~VPA~~ to be negotiated between Council and the Developer well before the Development Application or Modification Application to which it relates is determined; or the Planning Proposal is made. This allows the draft ~~planning agreement~~ ~~VPA~~ to be exhibited alongside the Development Application, Modification Application or Planning Proposal and for submissions to be received and considered by the Council.

The purposes of this Policy are:

- a. To establish a fair, transparent, and accountable framework governing the use of ~~planning agreements~~ ~~VPAs~~ by Council;
- b. To set out the Council's specific requirements on the use of ~~planning agreements~~ ~~VPAs~~;
- c. To establish consistent and transparent processes for Council and Developers to enter into ~~planning agreements~~ ~~VPAs~~ that meet probity standards;
- d. To ensure that all Developers are treated equitably in the negotiation and execution of ~~planning agreements~~ ~~VPAs~~;
- e. To provide an efficient and streamlined approach to the negotiation and execution of ~~planning agreements~~ ~~VPAs~~;
- f. To enable the community to engage in relation to proposed ~~planning agreements~~ ~~VPAs~~ and gain an understanding of the public benefits proposed under ~~planning agreements~~ ~~VPAs~~;
- g. To facilitate innovative and flexible approaches to the provision of infrastructure and other public benefits in a manner that is consistent with Council's strategic planning objectives and infrastructure plans;
- h. To provide certainty for the community, Developers, and Council in respect to infrastructure and development outcomes.

3. Statutory Framework

This Policy establishes a framework to guide the preparation of ~~planning agreements~~ ~~VPAs~~ under Part 7 Division 7.1 Subdivision 2 of the Act and Part 4 Division 1A of the Regulation.

The Act and Regulation set out requirements that both the planning authority and Developer are required to follow when negotiating and entering into a ~~planning agreement~~ ~~VPA~~, including public notice and other procedural arrangements and administration.

Section 7.4(1) of the Act sets out the circumstances under which a ~~planning agreement~~ ~~VPA~~ may be entered into. The Act states that a Planning Agreement ~~is a voluntary agreement and~~ may be made between a planning authority (or two or more planning authorities) and a person (the developer):

- a. Who has sought a change to an environmental planning instrument, or
- b. Who has made, or proposes to make, a development application or application for a complying development certificate, or
- c. Who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,

Under which the developer may be required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of development contributions, to be used towards a public purpose.

The public purpose under section 7.4(2) of the Act extends (without limitation) to the following:

- a. The provision (or the recoupment of the cost of providing) of public amenities or public services, affordable housing, 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.

A council that is negotiating or entering into a **planning agreement VPA** must also consider any relevant practice notes issued by the Planning Secretary.

3.1 Statutory Planning Context

Council's LSPS is supported by a number of environmental studies and considers planning for growth in the LGA. Council strategies and plans seek to identify the community's needs for infrastructure such as community facilities, transport, open space, public domain, recreation infrastructure, utility services and capital works.

Planning agreements VPAs can play an important role in achieving specific land use planning outcomes that demonstrate strategic and/or site-specific merit. A **planning agreement VPA** should facilitate the provision of Public Facilities and amenity outcomes that advance the delivery of Council's strategic planning objectives and deliver important public benefits.

Long-term strategies, including the LSPS and 'Imagine 2050' Port Macquarie-Hastings Community Strategic Plan (CSP) and the delivery program are based on the outcomes of engagement with the community. The implementation of key aspects of some of these goals, the broader strategic directions and the delivery of key infrastructure areas can be directly or indirectly achieved through planning agreements.

The vision and goals established within Council's long-term strategic plans such as the CSP and LSPS flow through to supporting plans that guide Council's medium and short-term priorities:

- a. Long Term Financial Plan (10 years)
- b. Delivery Program (4 years)
- c. Operational Plan (Annual)

Alignment with relevant regional strategic plans including the North Coast Regional Plan should also be considered when considering entering into a **planning agreement VPA**.

4. Objectives of Planning Agreements VPAs

The primary objective of a **planning agreement VPA** is to enhance the provision of public benefits associated with development. It provides a legally enforceable tool whereby Developers offer and then are required to provide land dedications, monetary contributions, or other material public benefits, or any combination of them, for public purposes in connection with the development of land.

In considering, negotiating and entering into a **planning agreement VPA**, the Council will consider the following broad objectives:

- a. Meeting the current and future demands created by the development for new or improved public infrastructure, amenities or services.
- b. Meeting specific planning objectives of Council by providing public benefits identified in an adopted contributions plan or that achieve a Net Public Benefit.
- c. Compensating for the loss of or damage to a public amenity, service, resource or asset resulting from a development through replacement, substitution, repair or regeneration of amenities, services or assets.
- d. Rectifying a deficiency in existing Public Facilities in the LGA.
- e. Providing for future and recurrent funding for public infrastructure, amenities and services with sustainable funding.
- f. **Conservation and enhancement of the natural environment.**
- g. **Minimise any environmental impacts.**

Development must be assessed on its merits. As such development that is unacceptable on planning grounds will not be given consent merely because the developer offers to enter a **planning agreement VPA**.

The legislation provides that a consent authority cannot refuse development consent on the grounds that a planning agreement has not been entered into or that the developer has not offered to enter into such an agreement.

Council will not consider entering into and/or amending a **planning agreement VPA** retrospectively to offset works that are under construction or completed.

Section 7.4(9) of the Act states that a **planning agreement VPA** cannot impose an obligation on Council as a planning authority:

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

5. Mandatory Requirements of a Planning Agreement VPA

Section 7.4(3) of the Act requires **planning agreements VPAs** to provide for the following:

- a. A description of the land to which the agreement applies;
- b. A description of:
 - i. The change to the environmental planning instrument to which the agreement relates, or
 - ii. The development to which the agreement applies
 - iii. 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,
 - iv. In the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development,
 - v. If the agreement does not exclude the application of section 7.12 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.12
 - vi. A mechanism for the resolution of disputes under the agreement,
 - vii. The enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

Clause 205(1) of the Regulation requires that Council, as a planning authority, proposing to enter into a planning agreement, or an agreement that revokes or amends a **planning agreement VPA**, must prepare a written statement (referred to as an 'Explanatory Note'):

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

The Explanatory Note must be exhibited with the **planning agreement VPA**, amendment or revocation of a **planning agreement VPA** for at least 28 days before the agreement is entered into.

6. Principles / Responsibilities

In considering, negotiating and entering a **planning agreement VPA** Council will be guided by the following principles:

- a. Council will assess the public benefit of the offer by the Developer when deciding whether to proceed with the **planning agreement VPA**;
- b. Council will not allow Planning Agreements to impermissibly restrict the exercise of its functions as a consent authority under the Act, Regulation or any other act of law;
- c. Council will not use **planning agreements VPAs** for any purpose other than a proper planning purpose;
- d. Development that is unacceptable on planning grounds will not be supported because of planning benefits offered by developers that do not mitigate the impacts of development;
- e. When considering a Development Application, Modification Application or Planning Proposal, Council will not give undue weight to a **planning agreement VPA** and should always consider a proposal for development on its merits;
- f. The provision of public benefits in a **planning agreement VPA** should be consistent strategic land use and infrastructure planning;
- g. Where monetary contributions are paid, **planning agreements VPAs** should expressly provide the purpose for which the funds will be used;
- h. Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a **planning agreement VPA**;
- i. Council will not improperly rely on its statutory position, or otherwise act improperly, in order to extract unreasonable public benefits from developers under **planning agreements VPAs**, and will ensure that all parties involved in the **planning agreement VPA** process are dealt with fairly;
- j. Generally the public benefits contained a **planning agreement VPA** should relate to the subject matter of the proposed development or change to planning controls.
- k. Where Council obtains a financial benefit from a proposed **planning agreement VPA**, , it will take appropriate steps to ensure that it manages any conflict of interest it has between its role as planning authority and its interest in the development; and;
- l. Council will not employ value capture as the primary purpose of a planning agreement.

The principles are consistent with **Part 2.1 of** the Practice Note.

7. Acceptability Test

In considering, negotiating and entering a **planning agreement VPA**, the Council will consider whether the terms of the **planning agreement VPA** satisfy the 'acceptability test' as provided by the Practice Note.

Council will consider the following matters to determine if a proposed **planning agreement VPA** is acceptable:

- a. Is the proposed **planning agreement VPA** directed towards a proper and legitimate planning purpose having regard to the statutory planning controls and other adopted planning policies and infrastructure strategies and the circumstances of the case?
- b. Does the proposed **planning agreement VPA** provide for a reasonable means of achieving the relevant planning purpose and securing the relevant public benefit?
- c. Will the proposed **planning agreement VPA** produce outcomes that meet the general values and expectations of the public and protect the public interest?
- d. Will the proposed **planning agreement VPA** provide for the delivery of infrastructure or public benefits that are not wholly unrelated to the development?
- e. Will the Planning Agreement protect the community against adverse planning decisions?

7.1 Consideration of Planning Agreement in relation to planning proposals and Development Applications

When exercising its functions as consent authority under the Act in relation to a Development Application, Modification Application or Planning Proposal to which **planning agreement VPA** relates, Council will consider:

- a. whether the proposed Planning Agreement is related to the proposal and whether it may be subsequently considered in connection with the Development Application, Modification Application or Instrument Change; and
- b. if so, the proper planning weight to be given to the proposed **planning agreement VPA**.

8. Types and Forms of Public Benefits

To ensure that public benefits provided under **planning agreements VPAs** are directed towards appropriate and legitimate planning purposes, Council will consider whether the proposed public benefits:

- a. mitigate or compensate for the impact of the proposed development;
- b. meet Council's strategic planning policy objectives including those set out in section 7.11 or section 7.12 contributions plans (as the case may be);
- c. meet the requirements of Council's public infrastructure works program; and
- d. meet the objectives of other relevant draft or adopted Council policies, strategies or plans.

The nature of the public benefits to be made under a proposed **planning agreement VPA** will be the subject of negotiation between the developer and Council having regard to the particulars of the development application or planning proposal to which the **planning agreement VPA** relates.

9. Standard Planning Agreement VPA Template

Council has prepared a Standard Planning Agreement Template (Appendix 2). Council will generally require that **planning agreements VPAs** conform to Council's template document.

10. Explanatory Notes

Council is required under the Regulation to prepare an explanatory note that accompanies the **planning agreement VPA** for public exhibition. Developers will be required to prepare an explanatory note when preparing a **planning agreement VPA**.

The Explanatory Note must:

- a. Summarise the public benefits to be provided under the **planning agreement VPA**;
- b. Identify how the agreement promotes the public interest.
- c. Identify whether the agreement confirms with the Council's capital works program, if any.

- d. State whether section 7.11 and 7.12 contributions are excluded;
- e. Identify the security to be provided under a **planning agreement VPA**;
- f. State whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate.

The Explanatory Note should be in plain English so the public can readily understand the nature of the proposed development and the public benefits that will be provided. The Explanatory Note should indicate the timing of delivery of the public benefits and include maps, diagrams and other material to clearly explain what is proposed.

The Explanatory Note must summarise the objectives, nature and effect of the proposed agreement and contain an assessment of the merits of the proposed agreement, including the impact of public or relevant section of the public.

11. Planning Agreement Register

Under the Regulation, Council is required to keep a register of **planning agreements VPAs** applying to land within Council's area, whether or not Council is a party to a **planning agreement VPA**. Council is also required to record in the register the date an agreement was entered into and a short description of the agreement (including any amendments).

Council must make the following available for public inspection on the Council's website:

- a. The **planning agreement VPA** register,
- b. Copies of all **planning agreements VPAs** that apply to the area of Port Macquarie-Hastings Council
- c. Copies of the explanatory notes in relation to those agreements and
- d. Annual financial statements for **planning agreements VPAs** with a breakdown of money, land and works received.

12. Process

12.1 Notice of Intention

New Planning Agreement VPA

Planning agreements VPAs can be lodged during or after the lodgement of the associated Development Application, Modification Application or Planning Proposal.

However, it is Council's preference that all **planning agreements VPAs** be negotiated prior to lodgement, allowing the Development Application, Modification Application or Planning Proposal and the Planning Agreement to be publicly exhibited together where possible.

Councillors will not participate in negotiations with a developer or their representatives but may have a role in:

- (a) endorsing a draft **planning agreement VPA** for exhibition purposes,
- (b) endorsing an offer to enter into a **planning agreement VPA**,
- (c) approval to execute a **planning agreement VPA**.

Below is the procedure to enter a new **planning agreement VPA** associated with a Development Application, Modification Application or Planning Proposal:

1. At the pre-lodgement meeting for a Development Application, Modification Application or Planning Proposal, the Developer and/or Council will discuss whether a **planning agreement VPA** appropriate in the circumstances. If the developer considers that it is appropriate to make an offer for a **planning agreement VPA**, the offer should be made at the date of lodgement of the DA or planning proposal.
2. Generally, an offer for a **planning agreement VPA** should be lodged at the same time as lodgement of the Development Application, Modification Application or Planning Proposal. The letter of offer should outline the **planning agreement VPA** proposal and must contain all the information in Council's **planning agreement VPA** Information Requirements Factsheet.
3. Council will review the letter of offer and will either accept or reject the offer. Failure to provide sufficient information in the letter of offer may delay its review by Council.
4. If the offer is accepted, Council and the developer will enter into negotiations for the **planning agreement VPA**. If the offer is rejected, the developer may review the offer based on the feedback provided by Council and resubmit a new letter of offer.

Amendment To Existing **planning agreement VPA**

Below is the procedure to amend an existing executed **planning agreement VPA**:

1. Developer is to request a meeting with Council to discuss their intent to amend the **planning agreement VPA**. After a meeting, Council will provide details on the process and request the developer / applicant submit a letter of offer to amend the **planning agreement VPA**.
2. The letter of offer is to be accompanied by a copy of the previously executed **planning agreement VPA** with proposed marked-up changes. The letter of offer outlines all the proposed changes to the **planning agreement VPA** with justification, including any changes to the **planning agreement VPA** attachments. It must also contain all the information in Council's **planning agreement VPA** Information Requirements Factsheet.
3. Council will review the letter of offer and will either accept or reject the proposed amendments. Failure to provide sufficient information in the letter of offer may delay its review by Council.
4. If the proposal is accepted in-principle, Council and the developer will enter into negotiations for an amended **planning agreement VPA**. If the proposal is rejected, the developer may review the offer based on the feedback provided by Council and resubmit a new letter of offer.

12.2 Negotiation and Agreement Templates

New **planning agreement VPA**

Below is the procedure for negotiating a new **planning agreement VPA** associated with a Development Application or planning proposal:

1. Council's preference is to receive a letter of offer at the time of the lodgement of a Development Application / Modification Application or Planning Proposal. The offer will be considered the Development Contributions team. Negotiations on the terms of the offer may occur.
2. If the offer is accepted by Council, the parties will then proceed to negotiate the terms of the **planning agreement VPA**. A draft **planning agreement VPA** and Explanatory Note will then be prepared based on the accepted offer.
3. A template agreement for the **planning agreement VPA** and Explanatory Note is attached to this Policy. This agreement has been endorsed by Council and sets out Council's preferred terms. Council will generally require **planning agreements VPAs** to conform to template agreement.
4. An Explanatory Note must accompany a **planning agreement VPA**. The purpose of the Explanatory Note is to help the public understand what the agreement is proposing, how it delivers a public benefit, and why it is acceptable and in the public interest.

Amendment To Existing Planning Agreement VPA

Below is the procedure for negotiating an amendment to an existing **planning agreement VPA**:

1. Council will review the proposed changes to the executed **planning agreement VPA** and any proposed justifications
2. The key terms of the offer will be negotiated between Council and the developer. A draft **planning agreement VPA** and explanatory note will then be prepared by Council's lawyers, based on the offer submitted by the developer and negotiated between the parties, and approved by Council.
3. An explanatory note must accompany the amendment to the **planning agreement VPA**. The purpose of the explanatory note is to help the public understand what the agreement is proposing, how it delivers a public benefit, and why it is acceptable and in the public interest.

12.3 Public Exhibition

The public exhibition process is the same if either a new **planning agreement VPA** or an amended **planning agreement VPA**. Below is the process for public exhibition:

1. Following successful negotiations, a report to Council will be prepared recommending the new or amended **planning agreement VPA** be placed on public exhibition for a minimum period of 28 days in accordance with the Act section 7.5(1).
2. The public exhibition documentation shall include:
 - o A copy of the Council Report and minutes
 - o Draft **planning agreement VPA**
 - o Draft explanatory note
 - o If an amended **planning agreement VPA**, a copy of the original executed **planning agreement VPA**
3. Council will consider all public submissions in deciding whether to enter into a **planning agreement VPA** with the developer.
4. The draft **planning agreement VPA** may require further negotiations between the parties to consider any issue arising out of the submissions. This may result in the **planning agreement VPA** being amended. Re-notification of the draft **planning agreement VPA** will be required if the proposed amendments to the draft **planning agreement VPA** would significantly affect:
 - o the material public benefit delivered under the agreement; or
 - o the timing of the delivery of contributions, provision of security or the scope of works for an item; or
 - o changes to the terms of the agreement; or
 - o the Council's interests or the public interest.
5. The Council will publicly re-notify and make available for public inspection the amended **planning agreement VPA** and the application to which it relates. The draft **planning agreement VPA** and explanatory note will be reported to Council.
6. If Council resolves to enter into the **planning agreement VPA**, a condition of consent will be applied requiring the developer to enter into a **planning agreement VPA** reflecting the final letter of offer from the developer. Where the application is a planning proposal, the **planning agreement VPA** must be executed before the Local Environmental Plan is made or amended.

Upon completion of the public exhibition period a post exhibition report will be reported to Council for either adoption or non-support.

12.4 Finalisation

If the **planning agreement VPA** is supported and adopted by Council, the following process is to be followed:

1. The **planning agreement VPA** is to be signed by both parties to enable Council execution. A copy of the signed **planning agreement VPA** is to be provided to the developer/applicant.
2. Depending on the terms of the **planning agreement VPA**, the **planning agreement VPA** may need to be registered on the title with NSW Land Registry Services (LRS). Evidence of registration through a title search is to be provided to Council within 28 days of execution.
3. Further obligations under the **planning agreement VPA** are to commence in accordance with the particular clauses within the **planning agreements VPAs**.

The **planning agreement VPA** process flowchart is at Appendix 1.

13. Offsets

Generally Council will not accept an offer if it is less than what is normally required under section 7.11 or 7.12 contributions. Such an offer does not meet the criteria established by this policy.

Where an offer exceeds what is required by 7.11 or s 7.12 contributions, Council has a discretion as to whether to agree to the exclusion of section 7.11 or 7.12 contributions.

14. Valuation Methodology

Unless otherwise agreed between Council and the developer, where the benefit under a **planning agreement VPA** is the provision of land for a public purpose, the value of the development contribution will be the market value of the land (within the meaning of the *Land Acquisition (Just Terms Compensation) Act 1991*).

This will be determined by an independent registered valuer who is adequately experienced in valuing land in New South Wales. The valuer will be appointed with the agreement of all parties, or in the event of disagreement between the parties, acceptable to the Council. All costs of the independent valuer in carrying out such a valuation will be borne by the developer.

Where the benefit under a **planning agreement VPA** is the carrying out of works, the value of the benefit will be determined by an independent registered quantity surveyor. The quantity surveyor must be acceptable to both parties, or in the event of disagreement between the parties, acceptable to the Council. All costs of the independent registered quantity surveyor in carrying out the work will be borne by the developer.

Where the benefit under a **planning agreement VPA** is the provision of some other type of public benefit, Council and the developer will negotiate the manner in which the benefit is to be valued for the purposes of the agreement. If there is no agreement, the Council will determine the manner the benefit is to be valued.

The Council may require the value of benefits to be made to be indexed, using the same indexation methodology in Council's contributions plans.

15. Recurrent Charges

A **planning agreement VPA** may require a developer to make development contributions towards the recurrent costs of public facilities. Where the public facility mainly serves the development to which the **planning agreement VPA** relates, or a neighbouring development, the arrangement for recurrent development contributions may be in perpetuity.

Where the public facility is intended to serve the wider community, the **planning agreement VPA** may only require the developer to make development contributions towards the recurrent costs of the public facility until a public revenue stream is established to fund the ongoing costs of the public facility.

Proposed recurrent charges contributions must be detailed in the letter of offer for consideration in **planning agreement VPA** negotiations, and should include a reasonable contribution toward the ongoing maintenance, or the offer to maintain infrastructure for a certain period of time.

16. Application of Section 7.11 and 7.12 of the EP&A Act

A **planning agreement VPA** must specify whether local infrastructure contributions under section 7.11 or section 7.12 of the Act will apply to the development the subject of the **planning agreement VPA**, in addition to any development contributions to be provided by the developer and included in the **planning agreement VPA**.

Generally Council will not accept any offer of a **planning agreement VPA** where the offer is less than what otherwise would be required to be paid under section 7.11 or section 7.12.

This is a matter to be negotiated between Council and a developer.

17. Implementation Requirements

Council requires that a **planning agreement VPA** includes provisions setting out:

- a. the timetable for the fulfilment of obligations under the **planning agreement VPA**;
- b. the design, technical specification and standard of any work required by the **planning agreement VPA** to be undertaken;
- c. the manner in which ownership of land or other property is to be transferred to Council;
- d. the manner in which a material public benefit is to be made available for its public purpose; and
- e. a warranty period for work, materials, buildings and any other property provided. These warranties must be for a minimum of 12 months for materials and services such as electrical works, and 15 years for structural items.
- f. The security to be provided by the developer for the performance of the obligations in the **planning agreement VPA**.

18. Probity

To ensure that the negotiation and consideration of a Planning Agreement by Council is fair, transparent and uphold public confidence Council will:

1. Comply with the requirements of the Act, Regulation and this Policy in respect of planning agreement;
2. Only enter into **planning agreements VPAs** that achieve a Net Public Benefit;
3. Ensure **planning agreements VPAs** are voluntary;
4. Inform developers about the Council's Statement of Business Ethics Policy;
5. Ensure any conflicts of interest involving the Council are identified and appropriately managed (for example, it may be appropriate to have assessments undertaken by independent third parties where Council has an interest in the **planning agreement VPA**);
6. Ensure Council officers comply with the Council's Code of Conduct – July 2022
7. Ensure appropriate delegations and separation of roles and responsibilities within Council, including, but not limited to, the following:
 - a. Councillors must not be involved in the preparation or negotiation of any **planning agreement VPA**, but will be responsible for resolving whether or not to enter into one;

- b. Only Council officers with delegated authority will be involved in the preparation or negotiation of a **planning agreement VPA** on behalf of Council;
- c. Council staff with key responsibilities in assessing or providing advice on development applications (or ensuring compliance), will not have a role in the negotiation of a **planning agreement VPA** or its conditions, except where advice is required on matters relating to the conditions of consent for a particular proposal;
- d. Council will ensure that all discussions with a developer and their consultants are:
 - i. sufficiently documented;
 - ii. held at Council offices;
 - iii. properly minuted; and
 - iv. stored in Council's records management system;
- e. Where Council has a commercial stake in development the subject of a **planning agreement VPA**, take appropriate steps to ensure conflicts of interest are avoided or managed appropriately.

19. Council Costs

The Developer is responsible for all costs related to the negotiation, execution and registration of the **planning agreement VPA**. These costs include:

- a. negotiating, preparing, advertising and entering into the **planning agreement VPA** (including but not limited to legal fees, consultants, valuers, quantity surveyors fees and Council staff costs); and
- b. registration of the **planning agreement VPA** on the title of the relevant land; and
- c. the payment of any enforcement costs incurred by Council.

Prior to Council engaging its lawyers or other consultants, Council will require the developer to pay a cash bond to cover the expected cost of negotiating the **planning agreement VPA**.

Council's fees and charges set out the minimum fees payable by the developer, however additional costs may be incurred by Council during the negotiation and advertising process. The developer will be advised of any additional costs beforehand. The developer will be required to pay any additional on demand from Council.

As noted above, Council may require the developer to provide security for the Developer's obligations under the **planning agreement VPA** in the form of bank guarantee, cash or a bond, which will be negotiated and detailed in the **planning agreement VPA**.

20. Operation and Monitoring Planning Agreements VPAs

Depending on the circumstances, a **planning agreement VPA** may require the Developer to submit a report to Council to ensure compliance with the provisions of the **planning agreement VPA** and to monitor the progress of the **planning agreement VPA**.

21. Modification and Discharge of Obligations

Council may agree to a provision in a **planning agreement VPA** permitting the Developer's obligations under the VPA to be modified or discharged in the following circumstances:

- a. the Developer's obligations have been fully carried out in accordance with the **planning agreement VPA**, or
- b. the development consent to which the **planning agreement VPA** relates has lapsed, or
- c. the development consent to which the **planning agreement VPA** relates has been modified to such an extent that the obligations may not be appropriate, or

- d. the performance of the **planning agreement VPA** has been frustrated by an event or events beyond the reasonable control of the parties, or
- e. other material changes affecting the operation of the **planning agreement VPA** have occurred, or
- f. Council and the developer otherwise agree to the modification or discharge of the **planning agreement VPA**.

Such a provision may require the modification of the **planning agreement VPA** in accordance with this policy, and the Act and Regulation.

22. Assignment, Novation and Dealings by the Developer

Council will not permit the assignment or novation of any or all of the developer's rights or obligations under the **planning agreement VPA** to a third party, or any dealing in relation to any part or the whole of the land the subject of the **planning agreement VPA** unless:

- a. the Developer has, at no cost to Council, first procured the execution by the person with whom it is dealing all necessary documents in favour of Council, by which that person agrees to be bound by the **planning agreement VPA** as if they were a party to the original **planning agreement VPA**;
- b. if the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, Council is satisfied that there remains sufficient unencumbered value in the land to enable Council to realise the value in the land under a charge to Council in the event of a breach. Other parties' interests must not rank above Council's interest in the land;
- c. the developer provides Council with evidence that the proposed assignee, novatee or transferee is reasonably capable of performing the obligation of the **planning agreement VPA**;
- d. the Developer is not in breach of the **planning agreement VPA**.

This does not affect the operation of any of the other requirements of the **planning agreement VPA**.

23. Provision of Security under a Planning Agreement VPA

Council will require a **planning agreement VPA** to make provision for security to cover the Developer's obligations under the **planning agreement VPA**. The security amount must be adequate to allow Council to ensure that the relevant material public benefit will be made available to meet the need generated by the development. Security requirements and enforcement procedures are set out in the **planning agreement VPA** template.

The security requirements are:

1. Monetary contributions - to be paid prior to the issuing of any Part 6 Certificate under the Act, usually a subdivision certificate or construction certificate.
2. Works contributions - the developer will be required to provide an unconditional bank guarantee in favour of Council or bond that is 130% of the agreed value of each of the works in the **planning agreement VPA**. The security must be lodged with Council before a construction certificate is issued for each work. Upon completion of each work, to Council's satisfaction, part of the security equivalent to 100% of the value of the work will be returned to the developer. The remaining 30% of the value of the work will be retained by Council as a security bond. The security bond will be returned after the defects liability period and maintenance periods have expired, and relevant Council staff have certified in writing that all obligations and works have been undertaken and completed to the standard set out in the **planning agreement VPA** and any relevant approval.

3. Land dedication - Council will require a provision in the **planning agreement VPA** allowing Council to compulsorily acquire the land to be dedicated, or transferred for a nominal sum, if the landowner defaults.

24. Registration of **Planning Agreement VPAs**

Most **planning agreements VPAs** may be required to be registered on the title of the land to which they relate within 28 days of execution by all parties. Upon the commencement of the **planning agreement VPA**, the developer is to provide Council with the following documents to enable registration of the **planning agreement VPA** on the land title:

- an instrument requesting registration of the **planning agreement VPA** on the title to the Land in registrable form duly executed by the landowner, and
- the written irrevocable consent of each person who has an estate or interest in the land.

The landowner is responsible for registering the agreement on the land title with the LRS and is to provide Council with evidence of lodgement and registration.

25. Dispute Resolution and Enforcement

The **planning agreement VPA** template provides the preferred mechanism for the resolution of disputes and the means for the enforcement of the **planning agreement VPA**.

26. References and Related Documents

- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*
- Planning agreements – Practice note – ~~February 2024~~ **May 2025** published by Department of Planning, **Housing and Industry and Environment**
- ~~Draft for Exhibition – Local Planning Agreements Practice Note~~

27. Definitions

Act means the *Environmental Planning and Assessment Act 1979*.

Council means Port Macquarie-Hastings Council.

Developer is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument), or who has made or proposes to make a development application or modification application, or who has entered into an agreement with or is otherwise associated with such a person.

Development Application has the same meaning as in the Act.

Explanatory Note means a written statement that summarises the objectives, the nature and effect of the proposed **planning agreement VPA**, amendment or revocation, and contains an assessment of the merits of the proposed **planning agreement VPA**, an amendment or revocation including the impact (positive or negative) on the public or any relevant section of the public.

Instrument Change means an amendment to an environmental planning instrument, such as the *Port Macquarie-Hastings Local Environmental Plan 2011*.

LSPS means the Council's Local Strategic Planning Statement, *Shaping Our Future 2040*.

Modification Application means an application to modify a development consent.

Net Public Benefit means a benefit to the public that results from the proposed development after considering the impacts of the particular development on surrounding land or the wider community and the provision of public benefits under a **planning agreement VPA**.

Planning Agreement means a voluntary planning agreement between a Developer and a planning authority for the provision of public benefits referred to in section 7.4 of the Act. Planning agreements maybe referred to as planning agreements in other documentation.

Planning Obligation means an obligation imposed by a **planning agreement VPA** on a developer requiring the developer to make a development contribution.

Planning Proposal has the same meaning as defined in the Act.

Practice Note means the document titled 'Planning agreements – Practice note – **February 2024 May 2025**' ~~and the draft Practice Note on Planning Agreements~~ published by the NSW Department of Planning, Housing and Industry ~~and Environment~~.

Public Facilities means public infrastructure, facilities, amenities and services.

Public Purpose means the following:

- a. the provision of, or the recoupment of the cost of providing, public amenities and public services, affordable housing, transport or other infrastructure
- b. the funding of recurrent expenditure in relation to public amenities and public services, affordable housing, transport or other infrastructure
- c. the monitoring of the planning impacts of development
- d. the conservation or enhancement of the natural environment.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Surplus Value means the value of the developer's provision under a **planning agreement VPA** less the sum of the value of:

- a. the public works required to be carried out by the developer under a condition imposed under section 4.17 of the Act; and
- b. 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 the subject of the **planning agreement VPA**.

VPAs ~~is the abbreviation other documents may utilise to refer to means~~ a voluntary planning agreement between a Developer and a planning authority for the provision of public benefits referred to in section 7.4 of the Act.

28. Disclaimer

Any advice given by Council at any stage when negotiating or submitting a **planning agreement VPA** is to be considered given in good faith. Council accepts no responsibility for the misinterpretation or inaccuracy of any advice given. It is the developer's responsibility to seek clarification where necessary.

This Policy is not legally binding. However, it is intended that the Council and all persons dealing with the Council, in relation to **planning agreements VPAs**, will follow this Policy to the fullest extent possible.

29. Periodical Updates

It is intended that this Policy will be periodically updated. The updates may cover additional matters to those covered in this Policy or provide more detailed information of guidance on specific matters covered in this Policy. Council will undertake a review of this Policy:

- a. within 12 months of any general election of Council; or
- b. at the discretion of the Chief Executive Officer; or
- c. when the Department of Planning, Housing and ~~Infrastructure~~ Industry (or equivalent) initiates any changes to the relevant legislation or guidelines that affect ~~planning agreements~~ ~~VPA~~s to enable incorporation into this Policy.

30. Implementation

30.1 Details of Approval and Revision

Approval Date	~~18/07/2024~~ Date endorsed by Council
Responsible Group	Strategy
Policy Owner	Director Community, Planning and Environment
Superseded policies	Planning Agreements Policy 2005, adopted 19/06/2006 ~~Planning Agreements Policy 2024, adopted 18/07/2024~~
Next Review Date	1 July 2029

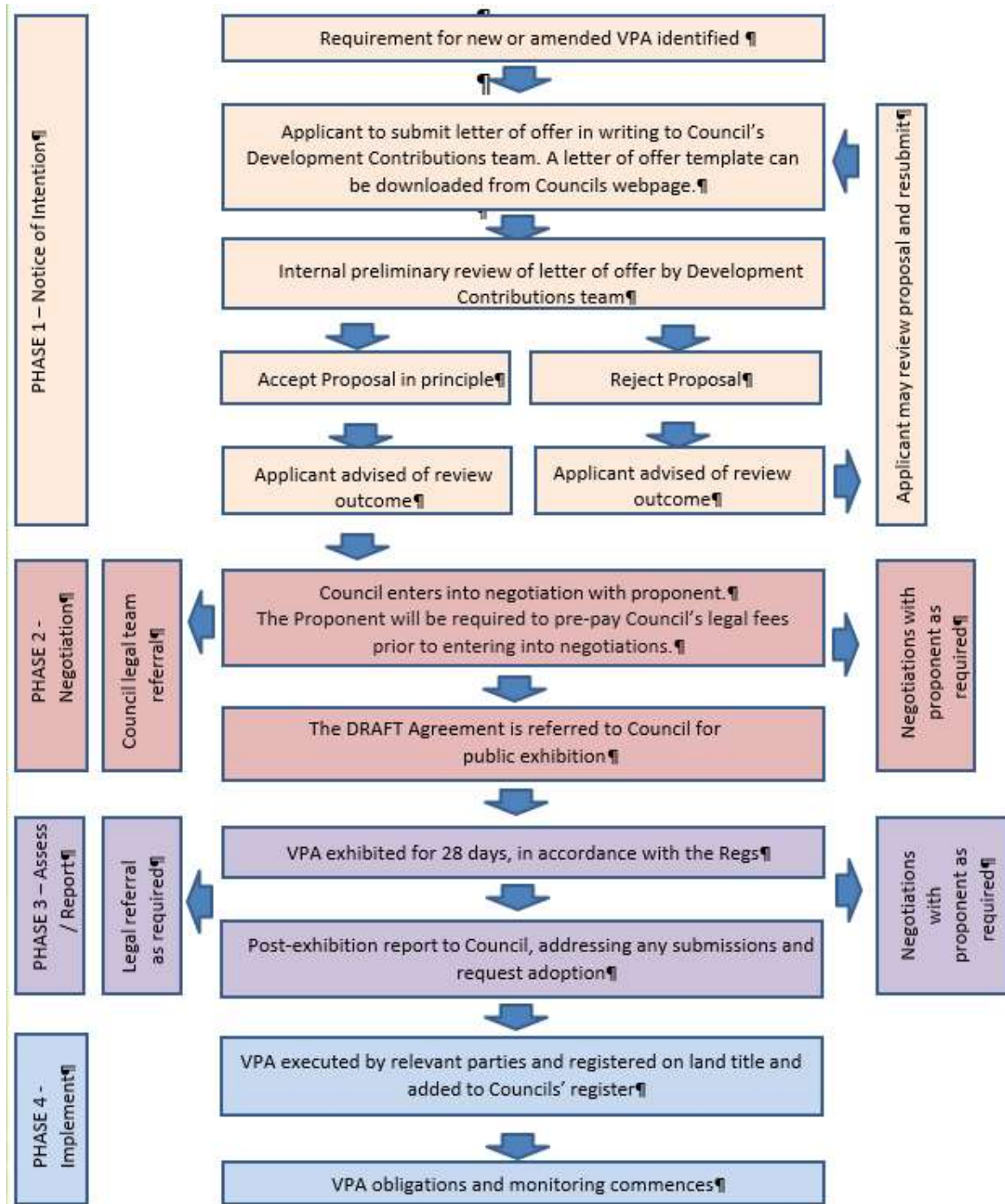
31. Responsible Officer

For more information on this Policy and its associated documents please contact the Development Contributions Team.

APPENDICES

APPENDIX 1

Planning Agreement Process Flow-Chart



APPENDIX 2

Planning Agreement Template

~~Refer to Attachment 3 within the Council Report.~~

INSERT TEMPLATE

APPENDIX 3

Potential Material Public Benefits

The following table lists examples of public benefits that **planning agreements VPAs** may seek to achieve. The list is not exhaustive, and developers are encouraged to discuss other public benefits with the Council:

Infrastructure	• Accessibility improvements – accessible parking, kerb ramps, modifications to public buildings or areas • Roads – design and construction • Open Space – parks, public places, open space, embellishment • Drainage and stormwater controls • Traffic measures • Transport outcomes • Pedestrian and cycleway linkages and footpaths • Telecommunication networks • Power, water, gas • Communications and information technology, i.e. Wi-Fi in public space • Bridges (pedestrian or vehicular) • Flood management/mitigation works
Facilities	• Community buildings – i.e. libraries, halls, community centres • Accessible, key worker and affordable housing • Childcare centres • Public toilets • Youth spaces • Public leisure facilities • Performance spaces • Civic spaces • Public car parking areas and commuter parking • Bus shelters • Family care facilities sport, recreation and activity centres • Business, research and creative industries incubator space and ancillary uses
Public domain improvements	• Paving – paths, streets and open space areas • Plantings – streets and open space areas • Furniture – seats, bins • Banners • Public art in streets, open space and other public domain space • Kerb and gutters • Treatment and/or features in public places • Facilities such as kiosk in parks and open spaces • Turf • Public leisure, sport and recreation facilities • Environmental management improvements such as water and energy minimising devices • Water bubblers, lockers and other amenities

	• Signage including suburb identification, way finding, parking, interpretation and information signs for pedestrians, cyclists and users of other vehicles • Restoration and management of natural areas including beaches, bushland, creeks and lagoons
Other	• Cash contributions • Land, such as dedications for use as parks, facilities, pedestrian connectivity and new roads • Contributions for development of community facilities plans and cultural facilities plans • Aboriginal site protection • Other benefits in line with Council plans and strategies – including plans of management, flood plan management plans, traffic and transport plans, masterplans, development control plans, local environmental plans and the management plan • Other public benefits that provide a positive planning outcome for the people of Port Macquarie and meet the objectives of the Act.