

Guide for completing Template for Planning Agreements

Clause No.	Subject	Explanation
1	Planning Agreement under the Act	<p>A “deed” and an “agreement” are legally different things. This clause is required to ensure that there can be no uncertainty that this document is intended to be a planning agreement as explained under the legislation.</p> <p>No amendments required.</p>
2	Application of this Agreement	<p>The effect of this clause is to identify the “Land”, which is a defined term, and the “Development” which is also a defined term. Definitions in clause 4 will be adjusted in each Planning Agreement.</p> <p>No amendments are required</p>
3	Operation of this Agreement	<p>The effect of this clause is that the Planning Agreement comes into effect on the date that this Agreement is signed.</p> <p>This clause is required because clause 203(3) of the <i>Environmental Planning & Assessment Regulations 2021</i> provides that a planning agreement is not entered into until it is signed by all the parties to the agreement.</p> <p>No amendments are required.</p>
4	Definitions and interpretation	<p>If you see a capitalised word, then check this clause to see if it has a special meaning. Defined terms are often capitalised words used throughout the document.</p> <p>For each Agreement, Council will need to insert definitions of “Development”, “Instrument Change” and “Land”</p> <p>No other amendments are required.</p>

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5	Development Contributions to be made under this Agreement	<p>The effect of this clause is to establish the Development Contributions as fully set out in Schedule 4 of the Agreement.</p> <p>This clause is required because Schedule 4 will then provide the full details of the Development Contribution, its value, timing, and public purpose. Other documents may be included at Schedule 6, but Schedule 4 will take precedence.</p> <p>The EPA Act requires the Agreement to detail the nature and extent of the provision to be made by the proponent 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.</p> <p>No amendments are required.</p>
6	Application of the Development Contributions.	<p>The effect of this clause is to provide that Council must apply the development contributions to the public purpose. This clause is required because section 7.4(1) of the <i>Environmental Planning & Assessment Act</i> provides that development contributions may only be used for or applied towards a public purpose.</p> <p>No amendments are required</p>
7	Application of 7.11, 7.12 and 7.24 of the Act to the Development	<p>The effect of this clause is to establish which of the local or special infrastructure contributions under the EPA Act apply.</p> <p>This clause is required under section 7.4(3) of the EPA Act.</p> <p>There are two forms of local infrastructure contributions:</p> <ul style="list-style-type: none"> • Section 7.11 contributions (formerly s.94) - these are charged where there is a demonstrated link between the development and the infrastructure to be funded. • Sections 7.12 levies (formerly s.94A). Section 7.12 contributions are an alternative to s7.11 contributions (that is, they are <u>not charged where Section 7.11 contributions apply</u>) and are charged as a percentage of the estimated cost of the development.

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		<p>There are also Ministerial directions for special infrastructure contributions (SIC). Section 7.24 of the EPA Act authorises the Minister to direct a consent authority to impose a condition in accordance with a determination of special infrastructure contributions for a special contributions area. The Housing and Productivity Contribution will replace the previous SIC in the NSW planning legislation. The Housing and Productivity Contribution will be made through a Ministerial planning order that will set out:</p> <ul style="list-style-type: none"> • the amount of the contribution • the area where the contributions will apply • the types of development that the contributions will apply to • when it needs to be paid and other details about how the contributions will be administered <p>No amendments are required.</p>
8	Registration of this Agreement	<p>The effect of clause 8(a) is to make the Proponent responsible for the registration of the VPA on title and associated costs. The EPA does not require planning agreements to be registered on title. However, registration on title of the land is one way to enforce the agreement, making it binding on, and enforceable against, the owner of the land.</p> <p>The number of days in clause 8(b) can be adjusted to reflect a commercial agreement.</p> <p>No other amendments are required.</p>
9	Interest in land	<p>The purpose of this clause is to ensure that the agreement is registered on title, despite any other arrangements the Proponent may have with the owner of the land. This ensures that the owner of the land is not required to be a party to the agreement.</p> <p>No amendments are required.</p>
10	Right to lodge a caveat	<p>A caveat is a type of statutory injunction that prevents the registration of dealings and plans on a title. It operates as a warning on a land title to others by noting a person or organisation’s interest in land or property. Only a person with an interest in land can lodge a caveat.</p>

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		<p>This clause is required as a caveat is an appropriate means of security.</p> <p>No amendments are required.</p>
11	Variation of this Agreement	<p>This is a standard clause that provides for variation only by written agreement of all parties.</p> <p>No amendments are required.</p>
12	Assignment and transfer	<p>Assignment means transferring legal rights and obligations to someone else, but the original party remains bound to the original contract. Novation means substituting a new party in place of the original party, releasing the original party from its obligations under the original agreement.</p> <p>The effect of this clause is to require Council’s consent to the incoming party. This clause is required to ensure the continued agreement of the incoming party and for Council to be certain that the person/company is capable of fulfilling its obligations under the planning agreement.</p> <p>No amendments are required.</p>
13	Right to transfer land	<p>A sale or transfer generally includes a sale or lease of the land. This clause is required because it is important that the incoming person is capable of fulfilling its obligations under the Agreement.</p> <p>The proposed transferee in (a) is referring to the incoming owner or lessee proposed by the proponent.</p> <p>The proposed transferee in (b) is referring to the incoming owner or lessee proposed by the proponent.</p> <p>A material breach means a failure to provide the Development Contributions in accordance with Schedule 4.</p> <p>This clause is required because it ensures the continued operation of the Agreement.</p> <p>No amendments are required.</p>

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14	Dispute resolution	<p>This clause is required because the EPA Act requires that all agreements have a mechanism for the resolution of disputes under the agreement.</p> <p>Interlocutory relief means orders that are issued by a court while a case is still ongoing, before the final resolution of the case.</p> <p>Arbitration and mediation are alternate ways to resolve disputes (that is, they are ways that parties can resolve issues, instead of going to Court). In mediation, a neutral, trained mediator works to help parties come to a consensus on their own. In arbitration, a neutral, trained arbitrator serves as a judge who is responsible for resolving the dispute.</p> <p>No amendments are required.</p>
15	Enforcement	<p>The security is required to ensure that the obligations under the Agreement will be met</p> <p>This clause is required because the EPA Act requires the Agreement to provide for 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 proponent.</p> <p>No amendments are required.</p>
16	GST	<p>This clause is required because of compliance with GST laws. The wording in this clause is very technical to meet legal obligations and should not be adjusted without specialist tax advice.</p> <p>No amendments are required.</p>
17	Entire deed	<p>This clause is a standard clause in a document such as this.</p> <p>No amendments are required.</p>
18	Governing law and jurisdiction	<p>This clause is a standard clause in a document such as this.</p> <p>No amendments are required.</p>

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19	Severance	Severance means that the agreement will continue to have effect in circumstances where particular clauses or parts of the contract are considered illegal or otherwise unenforceable. This clause is a standard clause in a document such as this. No amendments are required.
20	Good faith	Good faith means honest dealings. This clause is a standard clause in a document such as this. No amendments are required.
21	No fetter	Fetter means, in this context, to restrict or confine Council from doing something. This clause is a standard clause in a document such as this. No amendments are required.
22	Expenses and stamp duty	This clause is required because it places the payment obligations on the proponent. For completeness, we note that stamp duty will not be payable. No amendments are required.
23	Notices	An example of these matters includes a notice by Council to call on security, or a notice of dispute. No amendments are required.
Schedule 1	Table 1 – Requirements under section 7.4 of the Act (clause 2.2)	To be amended according to the terms agreed between the parties.
Schedule 2	Address for service	To be amended with details for the proponent.
Schedule 3	Land	To be amended to describe the land.

Clause No.	Subject	Explanation
Schedule 4	Development Contributions	To be amended according to the terms agreed between the parties.
Schedule 5	Security	<p>Clause 1 - This clause is required because it nominates an appropriate type of bank guarantee.</p> <p>Clause 2 – This clause is required because it provides the full description of the amount of the bank guarantee.</p> <p>Clause 3 – This clause is required because it notes that Council may claim on the guarantee and establishes the prior notice requirements.</p> <p>Clause 4 – This clause is required because it provides for the return of the guarantee.</p> <p>No amendments are required.</p>
Schedule 6	Miscellaneous Documents	To be amended to include any miscellaneous documents.