

*Sharing the cost of community facilities and services*



# Policy on Planning Agreements



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# 1. Part 1 – Policy Statement

## 1.1 Name of this policy

This Policy is known as the *Hornsby Shire Council Policy on Planning Agreements* ("the Policy"). It sets out Hornsby Shire Council's policy and procedures relating to planning agreements under the *Environmental Planning and Assessment Act 1979*.

## 1.2 Application of the policy and commencement

This planning agreements policy applies to the land and development within the local government area of Hornsby.

This Policy was adopted by resolution of Council on #####.

## 1.3 Objectives of this Policy

The objectives of this policy are:

- (a) to establish a fair, transparent and accountable framework governing the use of planning agreements by Council;
- (b) to enhance the range and extent of development contributions made by development towards public facilities in Council's area;
- (c) to set out Council's specific policies and procedures relating to the use of planning agreements within Council's area; and
- (d) to facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public benefits.

## 1.4 What does the planning agreements policy set out?

This Policy sets out the Hornsby Shire Council approach to the use of planning agreements through negotiation when considering rezoning or planning applications for development in Council area. It complements the policy approach set out in the Department of Planning's Practice Note titled *Planning Agreements* (19 July 2005).

In particular, this Policy sets out:

- the circumstances in which the Hornsby Shire Council would ordinarily consider entering into a planning agreement;
- the matters ordinarily covered by a planning agreement;
- the form of development contributions ordinarily sought under a planning agreement;
- the kinds of public benefits ordinarily sought and, in relation to each kind of benefit, whether it involves a planning benefit;
- the method for determining the value of public benefits and whether that method involves standard charging;
- whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate;
- when, how and where public benefits will be provided;
- the procedures for negotiating and entering into planning agreements; and
- Council's policies on other matters relating to planning agreements, such as their review and modification, the discharging of the developer's obligations under agreements, the circumstances, if any, in which refunds may be given, dispute resolution and enforcement mechanisms, and the payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

## 1.5 Legal Policy Context

The legal and procedural framework for planning obligations is set by the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005* which introduced Subdivision 2 of Division 4 of Part 6 providing for a statutory system of planning agreements. Council is also bound by the provisions of Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation 2000*.

The *Practice Note* issued by the Department of Planning sets out several tests for assessing whether planning is appropriate. These include an *acceptability test* to ensure that planning agreements:

- are directed towards proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development;
- provide for public benefits that bear a relationship to development that are not wholly unrelated to the development;
- produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits; and
- protect the community against planning harm.

## 1.6 What are the mandatory requirements of a planning agreement?

Section 93F(3) of the Act requires planning agreements to include provisions specifying:

- (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 applies, or
  - (ii) the development to which the agreement applies,
- (c) 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,
- (d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94 or 94A to the development,
- (e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94,
- (f) a mechanism for the resolution of disputes under the agreement,
- (g) 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

The Act does not preclude a planning agreement containing other provisions that may be necessary or desirable in particular cases, except as provided by law. However, Council has prepared a template agreement that will form the basis for a planning agreement and this will be used as the basis for any agreement. This is attached as Appendix 1.

Clause 25E(1) of the Regulation requires that an explanatory note must accompany a planning agreement that:

- summarises the objectives, nature and effect of the proposed agreement, amendment or revocation; and
- 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.

Council has prepared a template explanatory note which is attached as Appendix 2.

## 1.7 Terms and definitions used in this policy

In this Policy, the following terminology is used:



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

**Council** means the Council of the Shire of Hornsby,

**developer** is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (s93F(11)), or who has made or proposes to make a development 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,

**development contribution** means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

**explanatory note** means a written statement that provides details of the objectives, nature, effect and merits of a planning agreement, or an amendment to or revocation of a planning agreement,

**instrument change** means a change to an environmental planning instrument to facilitate a development the subject of a planning agreement,

**planning benefit** means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community,

**public facilities** means public infrastructure, facilities, amenities and services,

**planning obligation** means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution,

**Practice Note** means the *Practice Note on Planning Agreements* published by the former Department of Infrastructure Planning and Natural Resources (July 2005)

**public** includes a section of the public,

**public benefit** is the benefit enjoyed by the public as a consequence of a development contribution,

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

## ***2. Part 2 - Principles for planning agreements***

### **2.1 Purposes of planning agreements**

Section 93F(1) of the Act provides that a planning agreement is a voluntary agreement or other arrangement between one or more planning authorities and a developer under which the developer agrees to make development contributions towards a public purpose.

Council's approach to the negotiation of planning agreements is based on the planning purpose of furthering Council's planning vision for the area as set out in Council's strategic planning documents including, but not limited to, the Hornsby Social Plan, Strategic Financial Plan, State of the Environment Report, Community Sustainability Indicators, local environmental plans, development control plans, adopted master plans and Management Plan (as amended from time to time). When negotiating planning obligations Council will attempt to adopt a flexible approach, taking into account Council general priorities as set out in the programs to the Management Plan, the site circumstances and also the obligation preferences of the developer.

Council may negotiate a planning agreement with a developer in connection with any proposed application by the developer for a change to planning controls (eg a change of zoning) or for development consent relating to any land in Council's area. Council may also negotiate a planning agreement in association with another Council or another authority where relevant. The negotiation of a planning agreement is at the absolute discretion of Council.

### **2.2 Principles underlying the use of planning agreements**

Council's use of planning agreements will be governed by the following principles:

- (a) Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, regulation or any other Act or law.
- (b) Council will not use planning agreements for any purpose other than a proper planning purpose.
- (c) Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers.
- (d) Council will not seek benefits under a planning agreement that are wholly unrelated to the particular development.
- (e) Council will not take into consideration planning agreements that are wholly unrelated to an application, nor will Council give undue weight to a planning agreement.
- (f) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement.
- (g) Council will not improperly rely on its position in order to require unreasonable public benefits from developers under planning agreements.

### **2.3 What matters will Council consider?**

The matters that Council may consider in negotiations may include, but not be limited to, the following:

- (a) Whether or not the planning agreement(s) meets the demands created by the development for public infrastructure, amenities and services.
- (b) If inclusions in the development meet specific planning objectives of Council.
- (c) If 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.



- (d) Rectification of a deficiency in the provision of public facilities in Council's area is made.
- (e) Whether recurrent funding of public facilities is required or provided.
- (f) The extent to which Council needs to monitor the planning impacts of development.
- (g) Whether planning benefits for the wider community accrue from the planning agreement.

#### 2.4 What will Council require to be provided under planning agreements?

Existing growth levels place strain on existing facilities and services which cannot be met by s94 contributions. Council has identified a range of facilities and services which either requires substantial upgrade or provision. The programs identified in the Hornsby Management Plan and other related documents detail the key strategies to address these service and facility requirements.

The Department of Planning *Practice Note* on Planning Agreements sets out the acceptability tests for assessing whether planning obligations are appropriate in planning terms (refer clause 1.3 above). These matters have been taken into account when compiling the range of planning obligations which might be sought which is set out in Table 1. The table indicates the main types of benefits council will be seeking and their relative importance. Council prefers the collection of funding through a planning agreement as it provides additional funding and allows greater flexibility for the allocation of the funds depending on emerging priorities.

**Table 1: Main (Broad) Types of Planning Obligation Benefits to be Negotiated**

Type of Benefit
Local community facilities (including education, community health and well-being, childcare provision, civic improvements, tourism facilities/programs, information centres, public art, special youth facilities)
The environment (including compensation for loss or damage, monitoring the impacts of development, bushland regeneration works)
Transport improvements (such as new signals, roundabouts, signposting, cycleway upgrade and roadway reconstructions)
Providing planning benefits to the wider community (eg affordable housing, training and skills provision, economic development programs)

Appendix 3 to this policy provides details of the potential planning obligation benefits to be the subject of planning agreements. It is also recognised that the planning obligation benefits actually sought may differ from those given in the table or the facilities in Appendix 3 because negotiations for each proposed development will reflect the circumstances of each case and the needs created by the type and scale of proposed change. Therefore, other benefits which are not identified specifically above may also be relevant. Consequently, the lists do not prevent public benefits being negotiated on a case by case basis, particularly where planning benefits are also involved.

#### 2.5 Recurrent charges

Council may request developers, through a planning agreement, to make development contributions towards the recurrent costs of public facilities and services. Where the public facility or service primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity or a capitalised amount.

Where the public facility, service or public benefit is intended to serve the wider community, the planning agreement may only require the developer to make contributions towards the recurrent costs of the facility for a set period which will be negotiated according to the impact of the development.

#### 2.6 Pooling of development contributions

Where a proposed planning agreement provides for a monetary contribution by the developer, Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid

under other planning agreements and applied progressively for the different purposes under those agreements.

Pooling may be appropriate to allow public benefits, particularly essential facilities and services, to be provided in a fair and equitable way.

## **2.7 Relationship with Sections 94 and 94A Development Contributions Plans?**

Council has no general policy on whether a planning agreement should exclude the application of s94 or s94A of the Act to development to which the agreement relates. This is a matter for negotiation between Council and a developer having regard to the particular circumstances of the case.

However, where the application of s94 of the Act to development is not excluded by a planning agreement, Council will generally not agree to a provision allowing benefits under the agreement to be taken into consideration in determining a development contribution under section 94. In other words, any credit for section 94 contributions must be explicitly identified in the planning agreement if it is to be taken into account in determining section 94 levies.

## ***3. Part 3 - Negotiation Procedures and Probity***

### **3.1 Introduction**

Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable. Council will seek to ensure that the final negotiation of planning agreements occurs in parallel with applications for instrument changes or development applications so as not to unduly delay the approval.

Council is required to ensure that a planning agreement is publicly notified in the same manner and at the same time as the application for the instrument change or the development application to which it relates.

Council's preference is therefore to have the planning agreement negotiated and documented before it is publicly notified as required by the Act and Regulation. It will also ensure, where possible, that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.

### **3.2 Steps in the negotiation process**

The negotiation of a planning agreement will generally involve the following key steps:

1. Prior to the lodgement of the relevant application by the developer, Council and Developer (and any other relevant person) will decide whether to negotiate a planning agreement.
2. The parties will then appoint a person to represent them in the negotiations and also appoint a third person to attend and take minutes of all negotiations.
3. The parties will decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, and appoint such person.
4. A timetable for negotiations and the protocols and work practices governing their negotiations will be agreed between the parties.
5. The key issues for negotiation will be identified by the parties, and the negotiations over these issues will take place.
6. If agreement is reached, Council (and any other relevant party) will prepare the proposed planning agreement including the explanatory statement, and provide a copy of it to the developer.
7. The parties may undertake further negotiation on the specific terms of the proposed planning agreement as necessary.
8. Once agreement is reached on the terms of the proposed planning agreement, the developer may then make the relevant application to Council accompanied either by a copy of the proposed agreement or by an offer to enter into such an agreement with specifics of the agreement set out in detail.
9. Council will publicly exhibit the application and planning agreement in accordance with the Act and its Notification Policy. Council may re-exhibit the planning agreement if substantial modifications are required to the planning benefits following the original exhibition.
10. Council may approve the application and set out the conditions for the agreement or, if an agreement has been executed, set out in the consent the terms of the agreement.

The parties may be required to undertake further negotiations and, hence, a number of the above steps may need to be repeated as a result of the public notification process or its formal consideration by Council in connection with the relevant application.

### 3.3 Probity

Public probity is important to Council and it will ensure that the negotiation of any planning agreements is fair, transparent and is directed at achieving public benefits in an appropriate manner free of corruption.

In this regard, Council will:

- Inform any applicant about Council values and business ethics – specifically, about ethical behaviour appropriate to business dealings as outlined in its Code of Conduct.
- Seek to ensure that the community understands the system and Council's role – specifically, how the planning agreements system operates and how Council will deal with developments objectively.
- Notify planning agreements to ensure they are open and transparent – specifically, achieving maximum public awareness of the matters contained in a planning agreement(s) and the potential benefits of an agreement.
- Ensure appropriate delegations and separation of responsibilities in considering development applications that involve planning agreements – specifically, the need to ensure processes adequately address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk.
- Ensure that modifications to approved development should be subject to the same scrutiny as the original development application.
- Ensure that Councillors and Council staff understand their varied roles, some of which have potential to conflict.
- Take all reasonable steps to ensure that conflicts of interest are ameliorated to the greatest extent possible – specifically, independent assessment by third parties where Council has an interest, other than the agreement, and not entering into any contractual arrangement which purports to guarantee outcomes that are subject to separate regulatory processes.

The procedures that will be implemented to address these matters may include, but not be limited to, the following procedures:

- (a) Councillors will not be involved in the face to face negotiation of the agreement but will ultimately approve the planning agreement as part of their duties as Councillors.
- (b) A Council officer with appropriate delegated authority will negotiate a planning agreement on behalf of Council in accordance with this Policy.
- (c) Council will, in all cases, ensure that Council staff with key responsibility for providing advice on approvals, approving applications or ensuring compliance, do not have a role in the assessment of the commercial aspects of the agreement nor on the conditions of the planning agreement except where advice is required on matters relating to the conditions of consent for a particular proposal.
- (d) Council may involve an independent person(s) to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome.
- (e) Council will ensure that all negotiations with a developer and their consultants are sufficiently separated and documented.
- (f) Where Council has a commercial stake, other than the agreement, in development the subject of an agreement, it 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. Part 4 - Notification and Exhibition***

### **4.1 Public notification of planning agreements**

In accordance with the Act, a planning agreement will be publicly notified and available for public inspection for a minimum period of 28 days. Council may decide to notify a planning agreement for a longer period or shorter period as permitted by the Act.

Council will also notify the application to which a planning agreement relates in accordance with its Notification Policy.

### **4.2 Re-notification**

Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the agreement or the application or their formal consideration by council.

### **4.3 Public comment on planning agreements**

Council encourages the public to make submissions on planning agreements. This will allow Council to better understand local needs and to improve its policy on planning agreements. Council will require the planning agreement to contain a provision establishing a mechanism under which the planning agreement is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance under the agreement.

## ***5. Part 5 - Implementation and Conditions***

### **5.1 Preparation of the planning agreement**

Council will prepare a planning agreement relating to a particular application for an instrument change or development application. Council will use a standard form of planning agreement on which every planning agreement is based which reflects the policies and procedures set out in this document (refer Appendix 1). The planning agreement will include an explanatory note (refer Appendix 2).

Council will require a planning agreement to make reasonable provision for payment by the developer of reasonable Council costs of, and incidental to, negotiating, preparing and entering into the agreement as well as administering and enforcing the agreement.

### **5.2 When is a planning agreement required to be entered into?**

A planning agreement will be entered into when it is signed by all of the parties. Council will usually require a planning agreement to be entered into as a condition of granting development consent to the development to which the agreement relates.

### **5.3 When will planning obligations arise?**

Council will generally require a planning agreement to provide that the developer's obligations under the agreement take effect when the construction certificate is issued for the proposed development.

### **5.4 Implementation agreements**

Council will require that planning agreements provide for matters such as:

- (a) The timetable for provision of planning obligations under the planning agreement.
- (b) The design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer.
- (c) The manner in which a work is to be handed over to Council.
- (d) The manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

### **5.5 Monitoring and review of a planning agreement**

Council will continuously monitor the performance of the developer's obligations under a planning agreement and report them in accordance with the Act. Council will require the planning agreement to contain a provision establishing a mechanism under which a planning agreement will be periodically reviewed with the involvement of all parties. This will include a review of the developer's performance under the agreement.

### **5.6 Modification or discharge of obligations**

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

- (a) the developer's obligations have been fully carried out in accordance with the agreement; or
- (b) the development consent to which the agreement relates has lapsed; or
- (c) the development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate; or
- (d) the performance of the planning agreement has been frustrated by an event or events beyond the reasonable control of the parties; or
- (e) the developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms; or
- (f) other material changes affecting the operation of the planning agreement have occurred; or

- (g) Council and the developer otherwise agree to the modification or discharge of the agreement.

Such a provision will require the modification or revocation of the planning agreement in accordance with the Act and Regulation.

#### **5.7 Assignment and dealings by the developer**

Council will not permit the assignment of any or all of the developer's rights or obligations under the agreement, nor will Council permit any dealing in relation to any part or the whole of the land the subject of the agreement unless:

- (a) the developer has, at no cost to Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement; and
- (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, such documents provide for an agreement by the person to the effect that they, and any receiver appointed by them, will not enjoy rights greater than those of that party; and
- (c) the party is not in breach of this Agreement.

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

#### **5.8 Provision of security under a planning agreement**

Council will require a planning agreement to make provision for security to cover the developer's obligations under the agreement. The form of security will be an unconditional bank guarantee from an Australian Bank in favour of Council to the full value of the developer's obligations under the Agreement and on terms otherwise acceptable to Council.

#### **5.9 Notations on Certificates under S149(5) of the Act**

Council will require a planning agreement to contain an acknowledgement by the developer that Council will make a notation under S149(5) of the Act about a planning agreement on any certificate issued under s149(2) of the Act relating to the land the subject of the agreement or any other land.

#### **5.10 Registration of planning agreements**

Council may require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to s93H of the Act if the requirements of that section are satisfied.

#### **5.11 Dispute resolution**

Council will require a planning agreement to provide for mediation of disputes between the parties to the agreement before the parties can exercise any other legal rights in relation to the dispute.

#### **5.12 Will Council allow the application of SEPP 1?**

Variation to applicable development standards under State Environmental Planning Policy No.1 – Development Standards (SEPP 1) as part of a planning agreement will not be permitted unless Council is of the opinion that the tests within SEPP 1 are satisfied and the proposed planning agreement addresses the matters specifically required to be addressed under SEPP 1 in relation to the dispensation sought.

#### **5.13 How will the Council value public benefits under a planning agreement?**

If the benefit under a planning agreement is the provision of land for a public purpose, the council will generally 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* upon the compulsory acquisition of the land.



If the benefit under a planning agreement is the carrying out of works for a public purpose, the council will generally seek to value the benefit on the basis of the estimated value of the completed works on the basis of a cost estimate prepared by a registered quantity surveyor.

In either instance, the cost of the valuation of the benefits is to be at no cost to the council.

# ***APPENDIX A***

## ***Planning Agreement Template (Clause 1.6)***

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### **PLANNING AGREEMENT No. ##### of 200X**

Section 93L of the Environmental Planning and Assessment Act 1979

#### **Parties**

Hornsby Shire Council of >>>>>>>> New South Wales (Council)

and

## of ##, New South Wales (Developer).

## ***Appendix 1***

#### **Background**

*Planning Agreement Template (clause 1.6)*

##### **(For Development Applications)**

- A. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

##### **(For Changes to Environmental Planning Instruments)**

- A. On, ##, the Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities that Development Consent was granted.

- C. The Instrument Change was published in NSW Government Gazette No. ## on ## and took effect on ##.
- C. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

## Operative provisions

### 1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

### 2 Application of this Agreement

[*Note:* Specify the land to which the Agreement applies and the development to which it applies]

### 3 Operation of this Agreement

[*Note:* Specify when the Agreement takes effect and when the Parties must execute the Agreement]

### 4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Development** means ##

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Instrument Change** means ## Local Environmental Plan ##.

**Land** means Lot ## DP ##, known as ##.

**Party** means a party to this agreement, including their successors and assigns.

**Public Facilities** means ##.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

## **5 Development Contributions to be made under this Agreement**

[*Note:* Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made]

## **6 Application of the Development Contributions**

[*Note:* Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied]

## **7 Application of s94 and s94A of the Act to the Development**

[*Note:* Specify whether and to what extent s94 and s94A apply to development the subject of this Agreement]

## **8 Registration of this Agreement**

[*Note:* Specify whether the Agreement is to be registered as provided for in s93H of the Act]

## **9 Review of this Agreement**

[*Note:* Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur].

## **10 Dispute Resolution**

[*Note:* Specify an appropriate dispute resolution process]

## **11 Enforcement**

[*Note:* Specify the means of enforcing the Agreement]

## 12 Notices

12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

### Council

Attention: ##

Address: ##

Fax Number: ##

Email: ##

### Developer

Attention: ##

Address: ##

Fax Number: ##

Email: ##

12.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.

(c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

### **13 Approvals and consent**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### **14 Assignment and Dealings**

[*Note:* Specify any restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restrictions apply]

### **15 Costs**

[*Note:* Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties]

### **16 Entire agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

### **17 Further acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.



## **18 Governing law and jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

## **19 Joint and individual liability and benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **20 No fetter**

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## **21 Representations and warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

## **22 Severability**

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## **23 Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

## **24 Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by,

another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **25 GST**

If any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then recipient of the supply must pay an additional amount equal to the GST on that supply.

**Schedule 1 to Planning Agreement No #####**

(Clause 2)

**The Land**

[To be completed– include schedule]

**Schedule 2 to Planning Agreement No #####**

(clause 5)

The Public Works

[To be completed]

Item No.	Public Work	Stage	Estimated Value
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

**Schedule 3 to Planning Agreement No #####  
(clause 10)**

Law Society of NSW – Mediation Rules

[To be included]

## Execution of Planning Agreement No. XXXXX of 200X

Dated: ##

Executed as an Agreement:

**On behalf of the Council:**

The Seal of Hornsby Shire Council was affixed in accordance with a resolution passed at a duly convened meeting held on ## in the presence of:

**General Manager**

**Mayor**

On behalf of [Developer]:

## *Appendix 2*

*Explanatory Note Template (clause 1.6)*



## ***APPENDIX 2***

### ***Explanatory Note Template (Clause 1.6)***

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## **Explanatory Note**

(Clause 25E of the Environmental Planning and Assessment Regulation 2000)

[*Note:* To be completed upon finalisation of Planning Agreement]

### **Draft Planning Agreement**

Under s93F of the Environmental Planning and Assessment Act 1979

#### **1 Parties**

Hornsby Shire Council

## (Developer)

#### **2 Description of Subject Land**

#### **3 Description of Proposed Change to Environmental Planning Instrument/Development Application**

#### **4 Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

#### **5 Assessment of the Merits of the Draft Planning Agreement**

The Planning Purposes Served by the Draft Planning Agreement

**How the Draft Planning Agreement Promotes the Objects of the Environmental  
Planning and Assessment Act 1979**

**How the Draft Planning Agreement Promotes the Public Interest**

- (a) How the Draft planning Agreement Promotes the Elements of the Council's  
Charter
  
- (b) Whether the Draft Planning Agreement Conforms with the Council's Capital  
Works Program

**The Impact of the Draft Planning Agreement on the Public or Any Section of the Public**

**Other Matters**

**Signed and Dated by All Parties**

## *Appendix 3*

*Works for Planning Agreements (clause 2.4)*

## APPENDIX 3

### *Works for Planning Agreements (Clause 2.4)*

#### Possible requirements:

The following is a list of possible requirements that the Council may have for planning agreements. They are not exhaustive and developers are encouraged to discuss these or other requirements that may be included in a planning agreement.

#### Community

- Town centre civic and urban design improvements
- Car parking
- Mobile youth facilities
- Public art
- Community centre upgrades
- Affordable Housing
- Community education and health programs
- Youth facilities
- Skills and training for target groups

#### Environment

- Bushland improvements/regeneration
- Stormwater drainage works in urban areas
- Water quality monitoring program
- Streetscape improvements
- Land acquisition
- Bushfire facilities and trails
- Tree planting

#### Traffic and Transport

- Westleigh/Thornleigh traffic management
- Hastings Road upgrade
- Traffic signalisation and signage
- Off road bikeways
- Dural Service Centre service lane
- Road reconstructions and upgrades

#### Economic Development

- Tourism and Economic Development Program
- Community transport
- Visitor information services/facilities



## **Hornsby Shire Council**

ABN 20 706 996 972

### **Contact Details**

#### **In person**

The Administration Centre  
296 Pacific Highway  
Hornsby NSW 2077

Customer Service Desks are open from 8.30am - 5pm business days

#### **By post**

PO Box 37 Hornsby NSW 1630  
DX 9655 Hornsby

**By telephone** (02) 9847 6666

**By facsimile** (02) 9847 6999

**By email** [hsc@hornsby.nsw.gov.au](mailto:hsc@hornsby.nsw.gov.au)

**By website** [www.hornsby.nsw.gov.au](http://www.hornsby.nsw.gov.au)



**For enquiries on indexed rate of section 94 contributions contact:**  
02 9847 6030

**This policy can be viewed at:**  
[www.hornsby.nsw.gov.au/building & development/policy on planning agreements](http://www.hornsby.nsw.gov.au/building%20&%20development/policy%20on%20planning%20agreements)