

# Planning agreement policy

## Summary of policy

This policy provides an overview of the planning agreement process for Hornsby Shire Council. It aims to:

- (a) provide clear explanation of the steps involved in preparing a planning agreement;
- (b) set out obligations of the key individuals participating in the process; and
- (c) provide specific details regarding the mandatory use of template letters of offer and template planning agreements in Hornsby Shire.

This policy attempts to present the information in plain English, making it more easily understood by all stakeholders, including proponents and the community.

By outlining the process, roles, and requirements, the policy aims to promote transparency, consistency, and effective communication throughout the planning agreement journey.

This policy emphasises the importance of using template documents when proponents initiate the planning agreement process in Hornsby Shire. These templates serve as standard forms, ensuring agreements meet Council and community expectations. By requiring the use of template documents, the policy seeks to streamline the process, enhance efficiency, and maintain a clear framework.

## Why has the council prepared this policy?

Although planning agreements were introduced into the NSW planning system almost two decades ago, they remain poorly understood. They are often written in legal language, reflecting that they are a contract between planning authorities and proponents. However, this can mean they are difficult for the layperson to understand.

However, planning agreements are important for providing valuable community benefits.

This policy and accompanying template documents aim to break down and simplify planning agreements.

Council has prepared this policy as a best practice guide to:

- (a) educate proponents, councillors, council staff and the general public about planning agreements,
- (b) establish best practice procedures for planning agreements that are clear and council will consistently apply,
- (c) describe the process that will be followed in preparing, publicly exhibiting, signing, implementing and finalising planning agreements,
- (d) set out the Council's expectations of individuals involved in the planning agreement process, and
- (e) implement the NSW Government's policies on the use of planning agreements.

## What is a planning agreement?

A planning agreement is a voluntary agreement or another arrangement between a planning authority (including a council) and a proponent, under which the proponent is required to contribute to public purposes and public facilities.

The contribution can be a monetary amount, the dedication of land free of cost, any other material benefit, or any combination.

A planning agreement can be made in connection with the following development types:

- (a) a planning proposal to change the planning controls applying to land
- (b) a development application for consent to carry out development
- (c) the modification of a development consent.

A planning agreement must include, as a minimum:

- (a) a description of the land, the planning proposal (if applicable), and the development to which it applies
- (b) details of the nature, manner and timing of the provision to be made by the proponent under the agreement
- (c) advice on whether the agreement excludes (wholly or in part) or does not exclude the application of section 7.11 and other development contributions provisions to development
- (d) if the application of section 7.11 is not excluded, advice on whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11
- (e) a dispute resolution mechanism
- (f) a suitable means of enforcing the agreement in the event of a breach of the agreement by the proponent.

The above information is a summary of what a planning agreement is and its minimum requirements. For detailed information refer to:

- the NSW *Environmental Planning and Assessment Act 1979* (particularly sections 7.1 to 7.10)
- the NSW *Environmental Planning and Assessment Regulation 2021* (particularly clauses 202 to 206)
- the *Planning Agreements Practice Note* dated February 2021, prepared by the Department of Planning and Environment.

## Why does the Council use planning agreements?

Councils are limited in how they can mandate a proponent to provide facilities and services to meet the extra infrastructure demands caused by their development.

Conditions of consent requiring works to be undertaken and local infrastructure (or 'section 7.11') monetary contributions allow council to require proponents to upgrade infrastructure. However, the extent of works and the contribution amounts are restricted by legislation, government directions and case law.

Planning agreements are voluntarily offered by a proponent and are not mandatory. This aspect provides the following opportunities, which are key reasons why the council supports the use of planning agreements:

- (a) Planning agreements are a tool council uses to achieve better planning outcomes or community benefits from development projects.
- (b) Planning agreements allow council to transparently accept money, works, land or services that benefit the public from a proponent.
- (c) Planning agreements free up councils and proponents to negotiate the type, extent, value, timing and means of providing public facilities and services as part of development.

## What types of public benefits may Council seek through planning agreements?

Examples of the public benefits the Council will seek through planning agreements include the following:

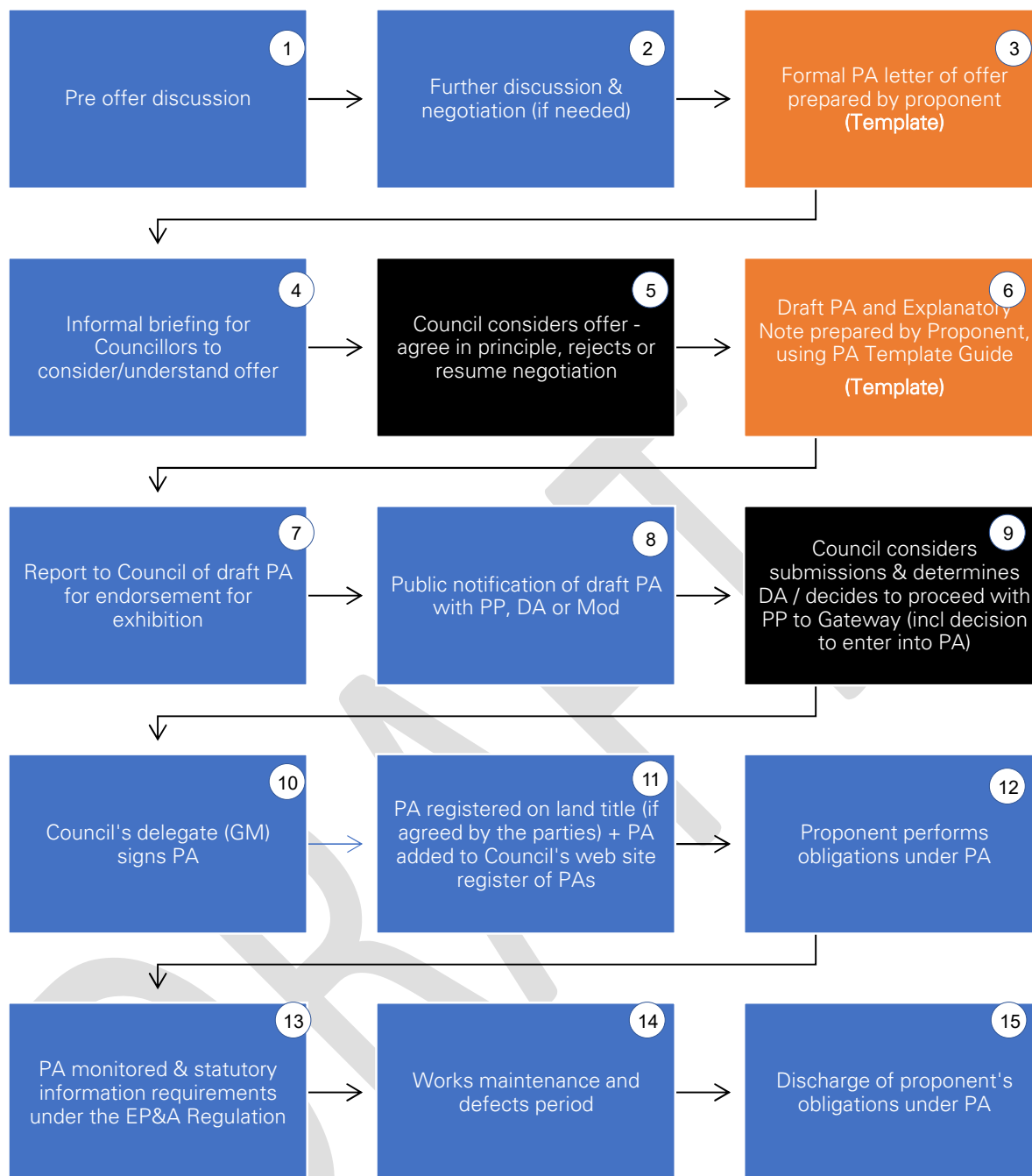
- (a) Negotiate a share in the value of uplift that may arise from changes in planning controls to provide a benefit to the community.
- (b) Where the proponent wants to provide local infrastructure in addition to, or at a higher standard than, what has been specified under council's contributions plan(s).
- (c) Recurrent/operational costs of infrastructure provided by a proponent where those costs over the asset life cycle are greater than would be incurred if council had provided the infrastructure.
- (d) Dedication of land to council for roads, public reserves or other public purposes identified in a development application to subdivide land.
- (e) Where Council and the proponent negotiate a different, better, or more innovative outcome than can be achieved through s7.11 or s7.12 contributions.
- (f) Where a proposed development has not been anticipated in council's contributions plan(s) and therefore works and facilities to meet the demands generated by that development have not yet been identified.
- (g) Where the proponent offers to provide monetary contributions for the provision of car parking spaces required by a development but are not provided on the development site.

## What is the Council's process for planning agreements?

The process council will follow in planning agreements it intends to be a party too is shown in the chart over page.

The process has the following four main phases:

1. Pre-offer negotiations (Steps 1 and 2)
2. Letter of offer (Steps 3 to 6)
3. Agreement preparation, exhibition and execution (Steps 7 to 10)
4. Agreement implementation and finalisation (11 to 15)



Notes:

PA = planning agreement, PP = planning proposal, DA = development application, Mod = development modification, GM = general manager

Black boxes indicate Council decision points

Orange boxes indicate use of PA Templates

## What is the template letter of offer and template agreement?

The template letter of offer and template agreement are standard forms that accompany this policy.

Templates may be found on Council's website [\[INSERT LINK UPON ADOPTION\]](#)

The template documents are written in plain English to ensure easy understanding by proponents, council, and members of the public. Plain English facilitates clear communication and transparency in the planning process.

The clauses in the template agreement are mandatory for all planning agreements. If the proponent chooses not to use the template, they must provide a proposed planning agreement draft that clearly shows in "tracking" what has been included or deleted from the template, as well as any new text proposed. This ensures transparency and consistency in the agreement's content.

## Who is responsible for Council's costs in preparing the agreement?

The proponent will meet Council's costs in preparing a planning agreement, including any review and consideration of adjustments in line with the template. Council's costs are addressed in the template letter of offer.

## Expectations during the planning agreement process

### What is expected of landowners and proponents?

Additional to the requirements set out elsewhere in this Policy, landowners and proponents that are a party to a proposed planning agreement will:

- (a) Avoid direct communication with any councillors concerning a planning agreement. Any communication must go through the client manager for the agreement.
- (b) Not discuss negotiation matters with Councillors or council staff (other than staff involved in the negotiation process), or seek to involve any Councillor in the negotiation process.
- (c) Conduct themselves in a professional manner in all meetings and communications with council.

### What is expected of councillors and council staff?

Council officers will:

- (a) Comply with the Council's code of conduct and statement of business ethics.
- (b) Make this Policy available to proponents.
- (c) Not support unacceptable development because of public benefits offered.
- (d) Not seek public benefits wholly unrelated to the development.
- (e) Where works are proposed as part of the planning agreement, provide the proponent with council's standard specifications. If there is no formal specification, council staff will work with the proponent to expeditiously document the particular specification for the works.
- (f) Ensure the consideration, negotiation and assessment of planning agreements are separate from the evaluation of a development application, modification application, complying development certificate or planning proposal.

- (g) Ensure agreements are consistent with council's strategic land use and infrastructure planning documents.
- (h) Manage any potential, perceived or actual conflicts of interest between council's role as the consent authority and its interest as a proponent (if it has an interest in a development.)
- (i) Ensure Council staff and Councillors know their roles and responsibilities in the planning agreement process.
- (j) Ensure a record of any meeting with the planning agreement proponent is documented and meeting minutes distributed to attendees within one week following the meeting.
- (k) Work with proponents to establish timeframes to progress agreements efficiently.
- (l) Make copies of executed planning agreements and other information about the planning agreements the council has executed available to the public, in accordance with section 206 of the EP&A Regulation.
- (m) Update this policy from time to time to ensure the policy is consistent with relevant legislation, practice notes and guidelines.

### Councillors will:

- (a) Comply with council's code of conduct.
- (b) In considering planning agreement offers, not allow interests of proponents, individuals or interest groups to outweigh public interest.
- (c) Not discuss with the proponent any matter relating to a draft planning agreement before a meeting of the full council that considers public submissions and whether to enter into the proposed agreement.

### Where an agreement includes works by the proponent

In the circumstances where a proponent offers to undertake works the following matters will also be addressed in the agreement as a schedule(s):

- a. Design and specification of works to be agreed by Council.
- b. Details on the commencement and completion of works.
- c. Inspection of the works by Council.
- d. Insurances required by the proponent to deliver works including:
  - i. Contract works insurance noting council as an interested party
  - ii. Public liability insurance
  - iii. Workers compensation insurance
- e. Rectification of defects – agreement to a defects liability period and defects rectification of works to be completed under the VPA.
- f. Conditions under which council will accept the handover of the completed works.