



CUMBERLAND
COUNCIL

CUMBERLAND PLANNING AGREEMENTS GUIDELINES

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1. Policy Framework

1.1. Purpose

These Guidelines, in conjunction with the *Cumberland Planning Agreements Policy*, set out Cumberland Council's policies and procedures relating to planning agreements under the *Environmental Planning and Assessment Act 1979*. In this regard the Guidelines seek to achieve the objectives below.

a. Objectives

The guiding objectives of these Guidelines, in conjunction with the *Cumberland Planning Agreements Policy* are to:

- a) Provide an enhanced and more flexible system of development contributions for the Council
- b) Broaden the range and extent of development contributions for public purposes arising from development
- c) Facilitate the provision of public and community infrastructure facilities, works, services and amenity outcomes that align with the Council's corporate and strategic planning context
- d) Allow for the flexible delivery of infrastructure for a planning proposal which may have planning merit but be out of sequence with broader strategic planning processes
- e) Facilitate the compensation for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration
- f) Enable development contributions under a planning agreement to fairly apportion the costs and benefits of development
- g) Set out Council's policies and procedures relating to the use of planning agreements
- h) Establish a fair, transparent, consistent and accountable framework governing the use of planning agreements by Council
- i) Establish a probity framework for the negotiation, preparation and implementation of planning agreements
- j) Facilitate public participation in the consideration of a planning agreement
- k) Secure off-site benefits for the wider community so that development delivers a net public benefit

1.2. Scope

These Guidelines apply to planning agreements that may be entered into by Cumberland Council. The Guidelines applies to land and development proposals within the local government area of Cumberland Council.

These Guidelines apply to any draft planning agreement that has not yet been exhibited, prior to the commencement of the *Cumberland Planning Agreements Policy* and these Guidelines.

The appendices do not form a formal part of these Guidelines and may be amended at any time without a resolution of Council.

1.3. Definitions

In these Guidelines, the following terminology is used:

Act means the *Environmental Planning and Assessment Act 1979*

Council means Cumberland Council

DCP means a DCP applying to the site of the proposed development or planning proposal. Note that there is more than one DCP applying in the Cumberland Council area following the Council amalgamations

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 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 to be used for or applied towards a public purpose

Development proposal means a development application or a planning proposal

Draft Secretary's Practice Note means the *Draft Practice Note Planning Agreements* published by the Department of Planning and Environment (November 2016)

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

LEP means a Local Environmental Plan applying to the site of the proposed development or planning proposal. Note that there is more than one LEP applying in the Cumberland Council area following the Council amalgamations

Low household income has the same meaning as in the *Draft West Central District Plan*; namely, 50%-80% of median Sydney income for the relevant year

Moderate household income means 80 – 120% of median Sydney income for the relevant year

Net public benefit means an overall gain to the public resulting from the consideration of the effects of both the development proposal and the development contributions under a planning agreement

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

Planning proposal has the same meaning as in the Act

Planning proposal request is a planning proposal requested or applied for by a developer

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

Practice Notes includes both Practice Note (2005) and the Draft Secretary's Practice Note

Public includes a section of the public

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

Public facilities means public infrastructure, facilities, amenities and services

Public purpose is defined in Section 93F(2) of the Act

Regulation means the *Environmental Planning and Assessment Regulation 2000*

Very low household income has the same meaning as in the *Draft West Central District Plan*; namely, 50% (or less) of median Sydney income for the relevant year

Value adding development proposal is a planning proposal request or development application that would result in potential land value uplift.

VPA means a (voluntary) planning agreement.

1.4. Policy Statement

Council is to apply these Guidelines to ensure that planning agreements comply with S. 93(F) of the *Environmental Planning and Assessment Act 1979* and provide infrastructure and other public benefits that support Council's strategic direction and provide good value to the community.

1.5. Legal and Policy context

The legal and procedural framework for planning agreements is set by the following:

- a. The provisions of Subdivision 2 of Division 6 of Part 4 of the Act; and
- b. The provisions of Division 1A of Part 4 of the Regulation.

These Guidelines are also guided by the following:

- c. The *Practice Note on Planning Agreements*, Department of Infrastructure Planning and Natural Resources (July 2005)
- d. The *Draft Practice Note Planning Agreements* and the *Ministerial Direction for Planning Agreements – Draft for Consultation* published by the Department of Planning and Environment (November 2016)
- e. The *Development Assessment Internal Audit Tool*, Independent Commission against Corruption (2010)
- f. The *Submission to the Draft Voluntary Planning Agreement Policy*, IPART (December 2016)
- g. *Direct Negotiations – Guidelines for managing risks in direct negotiations*, Independent Commission Against Corruption (May 2006)
- h. *Economic Advice on Value Sharing for Planning Agreements*, SGS Economics and Planning (August 2017)

These Guidelines are not legally binding. However it is intended that the Council and all persons dealing with the Council in relation to planning agreements will follow these Guidelines to the fullest extent possible.

1.6. Related Documents and Council Policy

These Guidelines should be read in conjunction with the *Cumberland Planning Agreements Policy*.

A number of Council documents are relevant to the *Cumberland Planning Agreements Policy* and these Guidelines, including: the *Cumberland Community Strategic Plan*, Council's *Statement of Business Ethics*, Council's strategies on community, transport, open space, public domain and recreation infrastructure, LEPs, DCPs, capital works programs, plans of management and other key Council documents.

1.7. Mandatory Requirements

The Act and the Regulation provide specific requirements for planning agreements and for the explanatory note, which include the following:

Planning Agreement

- a. Section 93F(3) of the Act requires planning agreements to include provisions specifying:
 - i. A description of the land to which the planning agreement applies;
 - ii. A description of:
 - the change to the environmental planning instrument to which the planning agreement applies; or
 - the development to which the planning agreement applies;
 - iii. The nature and extent of the provision to be made by the developer under the planning 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 planning agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development;
 - v. If the planning 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;
 - vi. A mechanism for the resolution of disputes under the planning agreement;
 - vii. The enforcement of the planning 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. Planning agreements will contain clauses that reflect Council's requirements as are generally set out in the *Cumberland Planning Agreements Policy* and these Guidelines.

Council has prepared a template planning agreement that is Council's basic preferred form for a planning agreement. This form is subject to amendment to suit particular circumstances. Please refer to Appendix B.

Explanatory Note

- b. Clause 25E(1) of the Regulation requires that an explanatory note must accompany a planning agreement that:
- i. Summarises the objectives, nature and effect of the proposed planning agreement, amendment or revocation; and
 - ii. Contains an assessment of the merits of the proposed planning agreement, an 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. Please refer to Appendix C.

Public notice

- c. Section 93G(1) of the Act requires public notice for a minimum of 28 days prior to:
- Entering into a planning agreement,
 - Amending or revoking a planning agreement.

This matter is addressed in Part 6 of these Guidelines.

2. Principles on the use of planning agreements

2.1. Use 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. It is therefore sometimes called a voluntary planning agreement, or VPA.

Council's approach to the consideration of planning agreements is based on the planning purpose of achieving the community's vision for the Cumberland area as set out in the Community Strategic Plan, Council's strategies on community, transport, open space, public domain and recreation infrastructure, LEPs, DCPs, capital works programs, plans of management and other key Council documents.



Planning agreements are voluntary and negotiated on a case by case basis.

Planning agreements may be used in relation to planning proposal requests or development applications.

Planning agreements will be used to secure a commitment to value sharing for 'value adding development proposals'. Value adding development proposals include planning proposal requests where a developer:

- seeks an increase in FSR
- seeks to amend a control or add a land use which would result in land value uplift

and development applications:

- seeking to access incentives linked to design excellence provisions or value sharing requirements

- seeking a Clause 4.6 variation to FSR standards, or to height standards where this would result in an increased achievable FSR for the proposed land uses, though it is noted that clause 4.6 variations are not generally supported other than in exceptional circumstances in which the standard is proven to be unreasonable or unnecessary.

There will be circumstances where planning agreements will also be used to directly provide identified or equivalent land, works or services in a Contributions Plan or infrastructure schedule. Where the proposal complies with the LEP or relevant environmental planning instrument (other than as outlined above) the scope of the planning agreement may be limited to the in kind land, works or services and the amount of the offset. Value sharing would not be required as the proposal would not result in any uplift in land value, nor would it increase population, visitor or workforce density beyond that planned for the area.

Section 93F(4) of the Act states that a planning agreement will not be invalid if there is no connection between the public benefit and the development application or planning proposal (development proposal). However, it is preferred that part/s of the public benefits proposed in a planning agreement are not wholly unrelated to the development proposal.

Planning agreements may be used by Council as a means of funding infrastructure and services that complement Council's contributions plan/s and any Council or State infrastructure schedule (or similar), such as the schedule included the *Parramatta Rd Corridor Urban Transformation Strategy (November 2016)*. Table 1 gives some examples of where the use of a planning agreement is most likely to be appropriate. This should not be seen as definitive, as the individual circumstances may also play a role.

Planning agreements may also be used to bring forward infrastructure or services that are not scheduled to be provided for some years, or to address an existing deficiency in public facilities.

Planning agreements complement contributions plans and infrastructure schedules, but are not a substitute for them.

A diverse range of benefits may be provided in order to make a contribution to the achievement of one or more elements of Council's vision, aims and priorities. When considering planning obligations, Council will adopt a flexible approach, taking into account the vision, strategic aims and priorities of Council, as described above, the *public purposes* outlined in the Act, the site circumstances and also the obligations and preferences of the developer.

Section 93F(2) of the Act defines 'public purpose' to include (without limitation) the provision of, or the recoupment of the cost of:

- Providing public amenities and public services (excluding water supply or sewerage services);
- Affordable housing, transport or other infrastructure;
- The monitoring of the planning impacts of development, or improvements; and
- The conservation or enhancement of the natural environment.

It also includes the funding of recurrent expenditure relating to public amenities and services, affordable housing, transport and other infrastructure.

Council may consider a planning agreement with a developer in connection with any development proposal relating to any land in Council's area. Council may also consider a planning agreement in association with another Council or another authority where relevant.

Planning agreements will be considered on a case by case basis. The consideration of a planning agreement is at the absolute discretion of Council.

Table 1. Some circumstances that may affect the appropriateness of using a particular contribution mechanism

Development Contributions Plan¹ or Levy	Planning Agreement
Areas with multiple owners who are unable to coordinate offering dedications or provision of a material public benefit	Major site or a precinct in single ownership or owned by a consortium
Different landholders likely to develop at different rates	Where a proposed development is unanticipated by Council and thus works and facilities to cater for this development have not been identified
Where the costs of needed infrastructure are relatively low , difficult to predict or spread over time	Where the owner or owners have an incentive to deliver the infrastructure, eg where faster infrastructure delivery is important to bring the development to market or where there is a mutual benefit to both parties
In high growth urban centres where infrastructure needs are mixed and where a high number of development can contribute to shared costs	Where the owners agree to be involved in the provision of public infrastructure beyond the scope of Council's Development Contributions Plan
Where Council can access supplementary funds to meet the non-development demand for the infrastructure included in the contributions plan	Where a council and the developer(s) can, by negotiation, achieve different and better or more innovative outcomes than can be achieved through imposing direct or indirect contributions
	Where the owners want to provide community infrastructure or other public benefits additional to those specified under the contributions plan.

¹ This includes any infrastructure schedule or similar in plans and strategies, that have not yet been incorporated into Council's Contributions Plan/s.

2.2. Fundamental Principles of Planning Agreements

The Practice Notes set out guidelines and safeguards in the application of planning agreements. These include determining the planning agreement's acceptability and reasonableness. In considering the use of a planning agreement, Council will have regard to the following principles:

- a. Planning decisions may not be bought or sold through planning agreements.
- b. Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other act or law.
- c. Council will not use planning agreements for any purpose other than a proper planning purpose.
- d. A development application or planning proposal that is unacceptable on planning grounds will not be permitted because of public benefits offered by developers that do not make the proposal acceptable in planning terms.
- e. Council will not give disproportionate weight to a planning agreement
- f. Council will not allow the interests of individuals, developers or interest groups to outweigh the public interest when considering a proposed planning agreement.
- g. Council will not improperly use its statutory position and will ensure a reasonable apportionment of the value added.
- h. Council will ensure that its bargaining power is not compromised or its decision-making freedom fettered through a planning agreement.
- i. Council will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interests in the development.
- j. Council will ensure that all parties involved in the planning agreement process are dealt with fairly.

2.3. When may the Council consider entering into a Planning Agreement?

The Council may consider entering into a planning agreement when a developer or the person who has entered into an agreement with the developer or is otherwise associated with a developer:

- a. proposes to, or has made a planning proposal request to enable the carrying out of development; or
- b. proposes to, or has made, a development application.

If the Council requires a planning agreement to be entered into as a condition of development consent, the planning agreement must be consistent with terms of an offer made by the developer in connection with the development proposal (development application).

Notwithstanding the above, the Council is not obliged to enter into a planning agreement with a developer.

2.4. Acceptability Test

The Council will apply the following test when determining the acceptability of a proposed planning agreement. Does the planning agreement reasonably:

- a. Satisfy the statutory requirements for planning agreements contained in the Act that the Regulation?
- b. Comply with the principles set out in section 2.2 of these Guidelines?
- c. Provide for proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development?
- d. Include some public benefit that bears a relationship to the associated development or planning proposal, that is not wholly unrelated to the development?
- e. Provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits?
- f. Produce outcomes that meet the general values and expectations of the public and protect the overall public interest?
- g. Protect the environment, the district economy and the community against planning harm?
- h. Provide for public benefits commensurate with the value of the development contributions which the Council considers are reasonably due in the circumstances?

In addition to the Acceptability Test, the Council will consider if there are any relevant circumstances that may operate to preclude the Council from entering into the proposed planning agreement.

2.5. Matters of Consideration

Council will consider matters that provide a positive planning outcome for the people of Cumberland and are in accordance with the objects of the Act. Such matters may include, but are not limited to, the following:

- a. Whether the planning agreement, together with the development resulting from the development proposal, meets the current and future demands created by the development for new public infrastructure, amenities and services
- b. Whether the planning agreement meets the Acceptability Test in s.2.4 of these Guidelines
- c. Whether inclusions in the development resulting from the planning agreement meet specific planning objectives of Council
- d. Whether the planning agreement will result in the provision of local or regional strategic infrastructure
- e. If compensation is required for the loss of, or damage to, a public amenity, service, resource, the natural environment or asset caused by the development through its replacement, substitution, repair or regeneration
- f. Whether the agreement includes rectification of an existing deficiency in the current provision of public facilities or infrastructure in Council's area
- g. Whether future recurrent funding related to the proposed public benefit is sustainable

- h. Whether sufficient net public benefit accrues to the wider community from the planning agreement
- i. In the case of a material public benefit not anticipated by a Contributions Plan and proposed to be offset against monetary contributions otherwise due under that Plan, the impact on the achievement of works identified within any adopted Contributions Plan of Council
- j. The extent and costs of monitoring or ongoing management to be provided by Council
- k. Industry and Council experience with the developer in relation to previous construction and planning agreements
- l. Whether the planning agreement is in the public interest.

Development proposals that are considered to be unacceptable on planning grounds will not be given consent because of unrelated benefits offered by a developer.

The most important factors in deciding what planning obligations might be required for a planning agreement associated with a development application, is likely to be the extent to which the proposed development exceeds the controls, the size and scale of the proposal and the impacts of the development.

The most important factor in deciding what planning obligations might be required for a planning agreement associated with a planning proposal request, is likely to be the size of the potential development and the nature of the change proposed but other factors such as the location, may also be relevant.

These matters will establish core information such as likely increase in population and demand for particular public services or infrastructure.

This information will help Council to determine the development application or planning proposal request and to consider the planning agreement.

2.6. What will Council require to be provided under Planning Agreements?

Council will require development contributions to provide a demonstrable net public benefit. The proposed benefit must provide a positive planning outcome for the people of Cumberland and be in accordance with the objects of the Act.

There are two specific public benefits that are a high priority for Cumberland Council, and which can only be funded in a limited way (or not at all) through Development Contribution Plans:

- a. The Duck River Open Space Corridor is Priority Project No. 2 in the *Draft West Central District Plan*. Council's Vision for the Duck River was minuted at the Council meeting of 1 February 2017 [Minute 004]. The Draft District Plan recognises the potential of this corridor to act as a regional open space destination. Council's vision is for a clean river amongst a regenerated landscape of suitable vegetation, linking into an accessible cycle network along the foreshore of the Parramatta River, providing a cool and tranquil retreat during summer, and a green heart that the community can be proud of. Minute 004 foreshadowed the use of value sharing and other mechanisms, to fund the implementation of the vision.

Council will expect 5% of the development contribution to Council in a planning agreement to contribute to the implementation of the Duck River Masterplan.

- b. Section 4.4.4 (Liveability Priority 3) of the Draft West Central District Plan sets a target of 5% to 10% of new floor space to be dedicated to affordable rental housing for people on low or very low incomes. In Cumberland LGA, median rental costs have increased by 77% between 2007 and 2017 (which is higher than the Sydney average increase), but the median household income in Cumberland has increased only 11%. As a result, there are a significant number of households in Cumberland in housing rental stress. This means that these households do not have enough income to cover rent as well as other basic living expenses.

As an important initial step in providing affordable housing, any planning agreement related to a planning proposal with a residential component will be required to contribute towards affordable housing for households on low or very low incomes. At least 5% of any potential additional residential floor space is to be dedicated to Council as affordable housing or where impracticable (eg for smaller developments), an equivalent monetary contribution.

In summary, the development contributions forming part of the planning agreements related to planning proposals or to development applications subject to Clause 4.6 of the LEP, should include contributions in line with Table 2 and Figure 1. Note that both the affordable housing and Duck River contributions will be included within the 50% of land value share.

Table 2. Specific public benefits required as part of a planning agreement related to:

	Minimum development contribution required	
	Development application subject to Clause 4.6	Planning proposal
Implementation of Masterplan for Duck River	5% of total development contribution*	5% of total development contribution*
Affordable Housing	No minimum requirement	Where the proposal includes a residential component, at least 5% of the additional residential floor space is to be dedicated to Council as affordable housing for low and very low income households [see also Section 3.2(e)]. Where this would result in floor space that would otherwise be part of the floor space of a dwelling, an equivalent monetary contribution will be provided to Council for that part of the floor space.

* As a monetary contribution or as works identified in the upcoming masterplan for Duck River

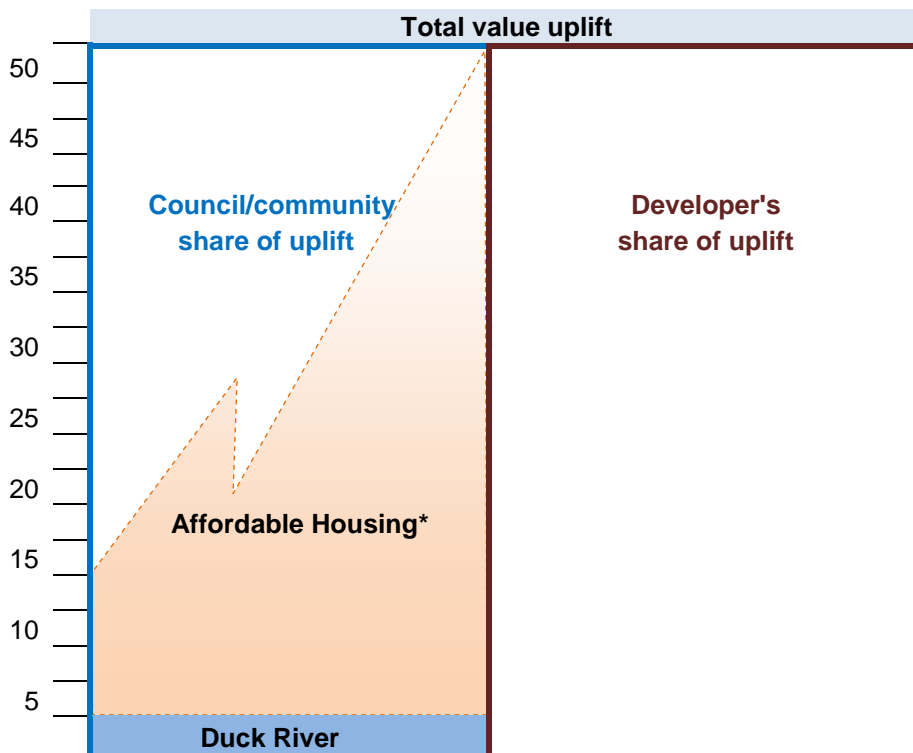


Figure 1. How the value uplift is shared between public outcomes and the developer.

*The proportion of the affordable housing component for a planning proposal will vary depending on the scale and type of proposal.

These Guidelines seek to standardise development contributions sought under planning agreements as far as practicable. Table 3 provides some guidance as to the kind of public benefits that are anticipated to bear some relationship to certain development types, to meet the requirements of section 2.4(d). Nevertheless, such benefits may also be provided by a planning agreement related to any type of development proposal as a contribution to the wider community benefit (see section 2.5(h)).

However, measures of a planning agreement which provide for mitigation of the impacts of a development proposal, have a nil \$value, for the purposes of calculating the monetary value of the contribution under the planning agreement².

Table 3. Potential relationship of public benefit types with different types of development

Type of public benefit	Relevant development type
Open space and local community facilities (including parks, sports fields, green links, community health and well-being facilities, youth and leisure facilities and public domain improvements, including building presentation and facades).	Residential developments would be relevant to any of these facilities, while commercial developments are relevant to the provision of childcare and civic improvements. These benefits are also relevant to development proposals that seek to bring forward development ahead of schedule.
Providing public benefits to the wider community (including affordable housing, support for start-up businesses, training and skills provision).	Residential developments are relevant to affordable housing, while commercial, retail or industrial development are relevant to economic or skills development. Replacement of industrial or large format commercial by retail or residential is also relevant to support for business development.
The works below may either be mitigation measures related to a development proposal or constitute a wider public benefit dependent on the individual circumstances	
Dedication or restoration for loss or damage to the environment, monitoring the impacts of development.	<i>Developments that have a negative impact on the environment either in construction or ongoing land use are particularly relevant to this type of contribution. Such works will only be considered to have monetary value for the purposes of a planning agreement, where they are beyond any measures required to mitigate the impacts of a development proposal.</i>

² This will occur in circumstances where a planning agreement is the best way to provide for mitigation measures. This will not always be the case. For example, for many development applications, mitigation measures will be included as conditions of consent.

<p>Transport improvements (including intersection upgrades, roadway expansion or pavement reconstruction, cycleways and public transport facilities).</p>	<p>Any form of development that generates additional population potential or traffic movements could make a contribution of this type of facility. Generators of heavy vehicular traffic such as industry in particular are relevant to transport improvements.</p> <p>Such works will only be considered to have monetary value for the purposes of a planning agreement, only where they are beyond any measures required to mitigate the impacts of a development proposal.</p>
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A more extensive outline of potential public benefits is set out at Appendix D. It is also recognised that the public benefits actually sought may differ from the facilities included in Appendix D because the consideration of each proposed development will reflect the circumstances of each case and the needs created by the scale and nature of proposed change. Therefore, other benefits which are not identified specifically in Appendix D may also be relevant.

For example, where there may be variations to a development control to support a proposed aged care facility that has planning merit, Council may consider it acceptable to obtain a public benefit as one element of a planning agreement such as a much needed child care facilities, so as to ensure that the population demands of Cumberland are met. Consequently, Appendix D is not intended to be exhaustive or to prevent public benefits being negotiated on a case by case basis.

2.7. Application of Clause 4.6 of an LEP

Variation to applicable development standards of an LEP as part of a development application will not be permitted unless Council is of the opinion that the tests within cl.4.6 are satisfied. This will be assessed on a case by case basis.

For the avoidance of doubt, this does not prevent acceptance of a planning agreement that includes public benefits not related to the proposed variation, where the development and associated written objection satisfy the tests of cl. 4.6.

2.8. Provisions of Planning Agreements relating to S.94 and S.94a and infrastructure schedules

Council will generally seek that infrastructure provided under a planning agreement is in addition to any contribution under s.94 and s.94A of the Act, and any applicable infrastructure schedule.

The ability of a planning agreement to partly or wholly exclude the application of s.94 or s.94A contributions gives Council a degree of flexibility to redistribute the financial, social and environmental costs and benefits of a development. This flexibility provides the opportunity to address issues that may not have been anticipated or may not be able to be appropriately addressed with the more restricted requirements of s.94 or s.94A contributions.

Council will only accept an offset against contributions for land or works of the same contribution type in Council's Contribution Plan or infrastructure schedule, unless Council forms the view that the land or works are essential infrastructure that is required in the immediate future to facilitate and service other development. If seeking an offset the developer is to include particular reference to the cost estimates for that item located in the works program in the relevant Contributions Plan or infrastructure schedule.

3. Assessment and Application of Funds

3.1. Costs of Negotiating, Preparing and Monitoring a Planning Agreement

Council will generally require a planning agreement to make provision for payment by the developer of the Council's costs of negotiation, preparation, independent advice, exhibition and execution of the planning agreement, as well as registering, monitoring, enforcing and administering the planning agreement.

3.2. How will the Council Value Public Benefits under a Planning Agreement?

The following matters regarding the value and form of development contributions should be determined as early as possible and prior to reporting to Council:

- The monetary value of the contribution to be made;
- The value of any land that is to be dedicated; and
- The value of the material benefit to be contributed.

Development Control Plans (DCPs) for certain locations in centres require developers to provide squares, forecourts or additional pedestrian linkages for public use. Complying with these public domain provisions will not entitle the developer to any bonus floor space, since there will not be any loss of development potential and DCPs have been publicly exhibited and adopted by Council before coming into force. Such provisions will be considered to have nil value for the purposes of the planning agreement.

However, the provision of such public domain areas, additional to DCP provisions, could be considered in a planning agreement.

Likewise, minor land acquisition (eg. for road widening) will generally not be considered as a development contribution in a planning agreement, as there will not usually be any loss of development potential. They will be considered to have nil value for the purpose of a planning agreement.

a. Monetary contributions

Where monetary contributions are proposed the planning agreement will include matters such as the following:

- i. The amount of the monetary contribution;
- ii. The purpose and extent of the monetary contribution (including a contribution to the implementation of the *Duck River Masterplan*);
- iii. When such contributions are to be paid;
- iv. The lodgement of a security (eg bank guarantee) and any other mechanisms to ensure due delivery of the contribution;
- v. In the case of staged payment, the nature of the staging or the dates or thresholds at which times payments are to be made;

- vi. A requirement that the contribution will be subject to regular adjustment against changes in the CPI, with the payment due calculated immediately prior to the time of payment;
- vii. The obligations of Council to expend the monetary contributions;
- viii. In the case of contributions that require additional funding from Council and/or other sources in order to achieve the ultimate objective, the process for managing and accounting for the contributions until such time as they can be expended including the investment of the contributions and the treatment of interest; and
- ix. Any other matters relevant to the securing of public interest in the management and expenditure of additional monetary contributions.

Monetary contributions may be pooled to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

b. Recurrent charges

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

Where the public facility 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 limited time, until, for example, a public revenue stream is established to support the ongoing costs of the facility and/or the proportion of the demand for that facility generated by the relevant development.

Where contributions towards recurrent costs are to be provided, the planning agreement is to include:

- i. The specific purpose of the recurrent funding;
- ii. The nature and extent of the recurrent funding;
- iii. The time period over which the funding shall be provided;
- iv. Any mechanism for the inflation of the recurrent funding;
- v. The heads of consideration for any endowment fund or trust that may be required to be established to manage the recurrent funding;
- vi. The lodgement of a security (eg bank guarantee) and any other mechanisms to ensure due delivery of the contribution; and
- vii. Any other matters relevant to the securing of the public interest in the achievement of an on-going public benefit.

c. Dedication of land

Where the development potential (floor space ratio) is to be calculated by including the land to be dedicated as part of the 'site area' as defined in the LEP, there is no loss of development potential. As the development potential of the land to be dedicated has been transferred, the value of the land to be dedicated for a public purpose will be considered to be nil. Such land is to be dedicated to Council free of all encumbrances, for nil consideration and nil cost to Council.

In other circumstances, where 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 market value of the land. This market value is to be provided by the proponent and independently verified by a registered and appropriately qualified and experienced property valuer. Council will seek an independent peer review of the valuation.

The planning agreement is to provide for indexation in line with the CPI. Following execution of a planning agreement, the agreed value will be as per the planning agreement (with indexation) regardless of any subsequent change in land value including a change in value between the execution of the planning agreement and the transfer of land ownership. If a planning agreement provides that a specified land dedication satisfies a required contribution or consent condition without specifying a land value that agreement will stand regardless of whether relative changes in land value or contribution rates alter the value of that agreement to either party.

Where land dedication is proposed, the planning agreement is to include a detailed description of the land, including:

- i. Address;
- ii. Lot and DP;
- iii. Area and site dimensions;
- iv. Ownership details;
- v. List of persons with an interest or estate in the land (who would need to give their consent to register the agreement on title);
- vi. Valuation of the site by a registered property valuer, except where the value is considered to be nil as outlined above;
- vii. A Quantity Surveyor's report if works are included, in accordance with d) below;
- viii. A copy of the title.

Land to be dedicated to Council is to be free of encumbrances

The planning agreement must include the lodgement of a security (eg bank guarantee) and any other mechanisms to ensure due delivery of the contribution.

In assessing the value to the community, Council will also consider the matters listed in Appendix E.

d. Works or other material benefit

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 and suitably qualified and experienced quantity surveyor. Council will seek an independent peer review of the QS report.

Where a planning agreement provides for another type of material public benefit, the Council and the developer will negotiate the manner in which the benefit is to be valued for the purposes of the planning agreement. Such benefits may include for instance, affordable housing, training facilities, child care facilities within a development, intersection improvements nearby.

In assessing the value to the community of community facilities proposed in a planning agreement, Council will consider the criteria for location, function, size and operation in the best practice guidelines in Council's studies and strategies on community, open space and recreational needs assessments.

The planning agreement must include the lodgement of a security (eg bank guarantee) and any other mechanisms to ensure due delivery of the contribution.

e. Affordable Housing

As outlined in Section 2.6 of these Guidelines, a planning agreement related to a planning proposal must make provision for affordable housing. A planning agreement related to a development application may also do so.

Where affordable housing (but not monetary contributions towards affordable housing) is to be provided as part of the planning agreement³, the provisions of the agreement will include:

- i. Whether the housing is to be provided for households with low or very low income housing, or a combination of both;
- ii. Where 3 or more dwellings are provided under this Part, there must be a range of dwelling sizes, from 1 to 3+ bedrooms, in accordance with the *Draft West Central District Plan*. At least 20% of these dwellings must incorporate the *Livable Housing Guideline's* universal design features. At least half of these are to be at the platinum level and half at the silver level;
- iii. Dedication to Council and the timing of such dedication;
- iv. Criteria for assessment of future tenants, or reference to a policy of the nominated housing provider/manager which specifies such criteria;

³ This is only likely to be practical where the value uplift could potentially result in an increase of 20 or more additional dwellings.

- v. The lodgement of a security (eg bank guarantee) and any other mechanisms to ensure due delivery of the contribution; and
- vi. Any other matters relevant to securing the public interest in the achievement of affordable housing.

Any proposed affordable housing provision in a planning agreement in excess of the requirements in Table 2 in Part 2.6 of these Guidelines, may be directed to moderate income households (eg. housing for key workers).

f. Cost of valuation

In any instance, the valuation of the benefits is to be at no cost to the Council.

g. Works ordinarily covered in conditions of consent

In the event that a planning agreement proposes works and services that would otherwise be provided as a condition of development consent, then those works and services will be deemed to have no value under the planning agreement.

h. Credits and Refunds

Council will not agree to a planning agreement that provides a credit or refund to the developer.

Council will not accept an offset against a component of Council's Contribution Plan or an infrastructure schedule, where the land or public facilities proposed are dissimilar to those proposed in the Plan or schedule.

3.3. Standardising Contributions

Wherever possible, the Council will seek to standardise development contributions sought under planning agreements in order to streamline negotiations and provide fairness, predictability and certainty to developers. The Guideline provides for development contributions that complement, not replace, requirements under Contribution Plans. Part 2.6 and the following sections provide the methodology to support this. This, however, does not prevent public benefits being negotiated on a case-by-case basis.

3.4. Methods for Calculating Contributions due

In calculating the appropriate amount of contributions due under a planning agreement, Council will differentiate between:

- A development application that complies with all development standards and controls;
- A development application that exceeds development standards and controls; and
- A planning proposal.

a. Calculation of Contributions due for a Development Application that Complies with Development Standards and Controls

Where development proposed in a development application complies with development standards and controls, a planning agreement may be sought to provide an alternative public benefit to facilities identified in Council's Contribution Plan. The value of the offset will generally be limited to the value of similar facilities identified in the Contribution Plan.

b. Calculation of Contributions due for a Development Application that does not comply with Development Standards

Where development proposed in a development application does not comply with development standards and controls (that is it is subject to Clause 4.6 of the LEP) and it will, if approved, result in an increase in land value, Council will determine appropriate contributions by applying value sharing as set out in Section 3.5.

c. Calculation of Contributions for a Planning Proposal

Where a planning proposal is likely to result in an increase in land value, Council will determine appropriate contributions by applying value sharing as set out in Section 3.5.

3.5. Value Sharing

Planning proposals and development applications that exceed the controls create additional value (financial value) simply by virtue of their approval. This additional value is not profit earned as a result of the construction of the development, rather it is an additional unearned net gain, (value uplift) that currently accrues to the landowner/developer.

These Guidelines seek to share this unearned net gain between the landowner/developer and Council on behalf of the community.

Value sharing is distinguishable from development contribution mechanisms under s.94 and s.94A of the Act in that it is focussed on sharing the value uplift, rather than on financing a limited extent of specified needs resulting from development such as public open space and recreational facilities, community facilities and traffic management. Accordingly, for value adding development proposals, the required contribution under a planning agreement is in addition to any obligations under s.94 or s.94A of the Act. However the contributions due under s.94 or s.94A of the Act will be included in the costs of development in estimating the value share between Council and the developer.

a. Land value sharing

Value uplift can be estimated in varying ways, but are always based on either uplift in land value or on revenue increases. Basing the estimated value uplift on the increased residual land value (RLV) from a development proposal is both less complex and fairer.

An excerpt from SGS Economics and Planning (2017) *Economic Advice on Value Sharing for Planning Agreements* is provided at **Appendix F** outlining the rationale for the selection of this methodology for Cumberland Council. Appendix F also contains a brief list of the development costs included and excluded in the calculation of land value uplift and value sharing.

For the purposes of the *Cumberland Planning Agreements Policy* and these Guidelines, value sharing is a public financing mechanism implemented through planning agreements by which the Council obtains for the community's benefit a share of the unearned gain to developers in residual land value arising from:

- A planning proposal which enables development, plus associated or consequential changes to any Development Control Plan(s); or
- The grant of a development consent which allows development to exceed the otherwise permissible development controls under the LEP or another environmental planning instrument.

b.A fair share

Council will generally expect that the total value of development contributions to be made under a planning agreement related to a value adding development proposal will be equivalent to 50% of the increase in residual land value (RLV) arising from the development proposal.

If a State Infrastructure Contribution⁴ (SIC levy) applies to the site and is not accounted for in calculating the standard RLV rates, the levy obligation may be deducted from both the 'before' and 'after' RLV estimates to reflect the reduced value uplift as a result of this cost.

At its absolute discretion, Council may accept a share less than 50%, where a development proposal:

- provides employment uses at levels above the ground floor,
- seeks to rezone employment lands to a different employment zone, in line with local and district innovation planning frameworks.

The mandatory contribution to the implementation to the Duck River Masterplan and to affordable housing forms part of the developer's contribution to Council of 50% of the uplift (see Figure 1).

⁴ The State Infrastructure Contribution for land in the *Parramatta Road Corridor Urban Transformation Strategy* is anticipated to be 20%- 30%.

c. Calculating the value share

The formula for calculating the value share (or monetary equivalent associated with value sharing) is provided below.

$$C = \frac{RLV(2) - RLV(1)}{2}$$

Where:

C = Monetary contribution – or the equivalent \$ value of the contribution

RLV(2) = Residual land value of a site following either:

- an amendment to the LEP applying to the land
- consent to development on the site allowing an exceedance of development standards or other planning controls;

and which allows higher use or intensified development on the site.

RLV (1) = Residual value of a site under the existing LEP

RLV (2) and RLV(1) are to be determined the land values in the table contained in Appendix G for land within certain precincts in Cumberland LGA as defined by Figures 1,2 and 3 in Appendix G. Appendix H provides worked examples of how to use the table in Appendix G.

If there is a disagreement between Council and the developer with respect to RLV(1) and/or RLV(2), the developer will be required to provide the Council with sufficient details, costs and valuations to determine a realistic figure for the residual land values under the existing and altered statutory planning controls, or resulting from the exceedance of development stands/planning controls. Items for inclusion and exclusion in the estimation of residual land values are listed in Appendix F.

Such documentation provided to the Council is to be verified by an independent certified expert, such as a practising valuer or a qualified and experienced land economist experience in NSW, or both if necessary. Council's project manager will engage the specialist/s. All costs of the independent valuer in carrying out such a valuation will be borne by the Developer.

For lands outside the precincts identified in Appendix G, Council will require a land valuation report prepared by a registered property valuer to be submitted with the development proposal. The valuation report will need to detail the residual value of the land under current controls and the residual land value should the development proposal be approved. As above, Council will seek an independent review. Following independent verification, the difference in the residual land value under the development proposal and the current residual land value will be determined as the 'uplift value' being sought. The development contribution in the planning agreement will be based on 50% of this 'uplift value'.

Where the existing maximum height control prevents the achievement of the existing maximum FSR, value sharing will also be applied. In such cases the proponent will need to prepare two schemes: their development proposal and a second scheme that is wholly compliant with the existing controls (e.g. complies with both height limit and maximum FSR). The increase in residual land value is calculated on the basis of the additional floor space in the planning proposal compared to that of the compliant design. A worked example is provided in Appendix H.

Proposed changes to the LEP contained in a planning proposal may be amended following the public consultation stage. In that case, further negotiations regarding the offer may occur having regard to changes in development potential and viability. Consequential amendments to the planning agreement may occur.

4. Ensuring Probity

4.1. Probity

As outlined in Council’s Statement of Business Ethics, public probity is important to Council and it will ensure that the consideration of any planning agreement is fair, transparent and is directed at achieving public benefits in an appropriate manner free of corruption or perception of bias, that provide good value to the community and the environment. Table 4 outlines the overarching probity guidelines for planning agreements, and the procedures for their implementation.

Table 4. Guidelines and process for ensuring probity

Probity guidelines	Procedures to implement the guidelines
Ensure that any considerations of the planning agreement are consistent with the fundamental principles outlined in Section 2.2 of these Guidelines	Prepare an assessment against the policy (either by staff or an independent third party) in reporting the planning agreement to Council
Promote community and developer awareness of the <i>Cumberland Planning Agreements Policy</i> and these Guidelines	Provide a copy of these Guidelines and the <i>Cumberland Planning Agreements Policy</i> to any person who seeks to enter into a planning agreement Council
	Publish these Guidelines and the <i>Cumberland Planning Agreements Policy</i> on Council’s website and promote the awareness of the Policy and Guidelines
	Exhibit planning agreements to ensure they are open and transparent with opportunity for public comment on the agreement and its potential benefits
Ensure that planning agreements are open and transparent	Ensure that all discussions with a developer and their consultants are sufficiently documented
	If the developer is not the owner of the relevant land, the landowner must be an additional party to the proposed planning agreement
	Avoid entering into any contractual arrangement which purports to guarantee outcomes that are subject to separate regulatory processes
	The initial decision about entering into negotiations about planning agreements is to be made and documented by the Group Manager or a higher officer.
Ensure that modifications to approved development are subject to the same scrutiny as the original development application	Notify members of staff involved in negotiating the planning agreement prior to determination

<p>Ensure the public benefits proposed are congruent with Council's overall strategic direction</p>	<p>Consider the matters outlined in Section 2.5 of these Guidelines.</p> <p>Staff from both the Community and Corporate Department and the Environment and Infrastructure Department will be involved in the consideration of the planning agreement</p> <p>The report to Council will consider the strategic merits of the proposed public benefits</p>
<p>Ensure that the value to the community is properly considered.</p>	<p>Council will usually involve an independent person(s) to facilitate or review a planning agreement proposal</p> <p>Where Council has benchmarks for the proposed public benefits, these can be used to ensure value for the community. In most cases however, Council will seek an independent valuation by a qualified and experienced expert. It may also be reasonable to examine the methodology that the proponent has used to arrive at its own price estimate. The proponent should provide this information in the context of the considerable advantage conferred on it as the result of direct negotiations. This methodology examination may involve scrutinising such details as the proponent's cost structure, profit margins and sub-contractor details, as well as accounts on similar projects. This practice is sometimes known as an 'open book' methodology. If necessary, this examination can be carried out by a third party, such as the agency's accountant, legal adviser or technical adviser</p> <p>Where Council does not have sufficient expertise internally about a matter for negotiation, it may engage technical, legal, financial and/or probity advisers to supplement internal resources in order to ensure that risks are managed. This should be undertaken as early in the negotiations where reasonable in the circumstances of the case</p> <p>Supervise the project to ensure that the performance of work is satisfactory</p> <p>Carefully scrutinise any variations proposed by the developer</p> <p>Council may conduct a post-completion evaluation of the project.</p>
<p>Take all reasonable steps to ensure that conflicts of interest are ameliorated to the greatest extent possible</p>	<p>The Councillors (or Administrator where relevant) will not be involved in the preparation of a VPA but will generally consider the VPA as part of their duties as Councillors (or Administrator)</p> <p>Ensure that Councillors (or the Administrator where relevant) and Council staff understand their varied roles, some of which have potential to conflict</p> <p>The Manager Strategic Planning or the Manager Development Assessment, or a higher officer, are delegated as the project manager to negotiate a planning agreement on behalf of Council in accordance with these Guidelines.</p> <p>The General Manager will execute (sign) the planning agreement on behalf of Council following Council endorsement.</p> <p>In addition, a delegate of the Deputy General Manager, Corporate and Community, and where relevant to the meeting, a Development</p>

	<p>Contributions officer, will attend meetings at which a planning agreement is being negotiated and provide advice on the planning agreement</p>
	<p>Council will avoid involving staff with conflicts of interest involved in planning agreement considerations. Staff involved in the negotiation of a planning agreement will be required to sign a declaration stating that they are not aware of any conflicts of interest. If it is unavoidable to involve staff with a potential conflict, the staff member must identify the interest and state how the conflict will be managed.</p>
	<p>Ensure that Council staff with key responsibility for providing advice on planning approvals or development applications, or ensuring compliance, do not have a unilateral decision-making role in the assessment of the commercial aspects of the planning agreement nor on the conditions of the planning agreement, except on matters relating to the conditions of consent for a particular proposal</p>
	<p>Council's statutory role will not be fettered, and therefore:</p> <ul style="list-style-type: none"> • Council will ensure that the Council officer who assesses the application to which the planning agreement relates is not the same person, or a subordinate of the person, who negotiated the planning agreement on behalf of Council • Council will seek and consider an independent assessment by a third party.

5. Negotiation procedures

5.1. Steps in Negotiating a Planning Agreement

Council's negotiation system for planning agreements aims to be transparent, predictable, efficient and accountable. Council prefers that a planning agreement be negotiated within the same timeframe as the associated development proposal, to avoid delays in its finalisation. Therefore a key stage in negotiations for a planning agreement associated with a development application is prior to the lodgement of the DA. The key negotiation stage for a planning agreement associated with a planning proposal is during and directly after the preliminary exhibition stage.

Accordingly, the process begins with discussion about the suitability of a planning agreement at a pre-lodgement meeting with staff. If it is determined at this stage that Council should negotiate a planning agreement with the developer, a project manager will be appointed by Council. The project manager will generally be responsible for all functions with regard to the proposed planning agreement. An independent third party will almost always be appointed.

The key steps in the negotiation of a planning agreement for a development application are outlined in the indicative flowchart at Appendix I. The steps for a planning agreement associated with a planning proposal are outlined at Appendix J. These steps may be varied on a case by case basis.

6. Public Notification and Information on Planning Agreements

6.1. Public Notification

Council's consideration of planning agreements will be transparent and accountable. Council will ensure that information is provided to the public in plain language using online media and other platforms.

The Act requires that, a planning agreement must be publicly notified and available for public inspection for a minimum period of 28 days. Council reserves the right to extend the statutory exhibition period.

Council will seek to ensure that the final consideration of a planning agreement runs in parallel with planning proposals or development applications so as not to unduly delay the determination. Where possible, Council will seek to publicly exhibit a proposed planning agreement, concurrently with the development proposal to which it relates.

Council's preference is therefore to have the planning agreement considered and documented before it is publicly notified as required by the Act and Regulation. It is therefore preferred that a letter of offer is considered by Council before lodgement of the relevant development application or planning proposal and that a draft planning agreement and explanatory note accompany the application or planning proposal on lodgement.

Where the development application or planning proposal to which a planning agreement relates is publicly exhibited for a period exceeding 28 days, the Council will publicly exhibit the planning agreement and make it available for public inspection and comment for that longer period.

The explanatory note related to the planning agreement will be publicly notified together with the planning agreement.

6.2. Re-notification

Council will publicly re-notify and make available for public inspection a proposed planning agreement if, in Council's opinion, a material change is made to the terms of the planning agreement 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 planning agreement or the development proposal, or their formal consideration by Council, or for any other reason.

This would be the case where proposed changes would materially affect:

- How any of the matters specified in section 93F(3) of the Act are dealt with by the planning agreement;
- Other key terms and conditions of the planning agreement;

- The planning authority's interests or the public interest under the planning agreement; or
- Whether a non-involved member of the community would have made a submission objecting to the change if it had been exhibited.

6.3. Public Authority Consultation

Relevant public authorities will generally be consulted in relation to the development application or planning proposal and planning agreement. For a development application this will occur during the negotiation process or during public exhibition. For a planning proposal it will occur as part of the preliminary exhibition. Any consequential amendments that may be required to the development application or planning proposal and/or proposed planning agreement as a consequence of those consultations will be discussed with the applicant.

6.4. Consideration of a Planning Agreement and the Development Proposal

Council's project manager (or delegate under the direction of the project manager) will assess the merits of a proposed planning agreement and public submissions in accordance with these Guidelines. Where submissions seek changes to the planning agreement the officer will report to Council on the submissions and any recommended changes in relation to the planning agreement. Any material change to the draft planning agreement will require an updated letter of offer and re-exhibition.

In addition, where a development application has been lodged, the planning agreement and public submissions made in relation to that planning agreement will also be considered by the relevant planning officer in the determination of the development application as part of the overall merit assessment.

Where a planning proposal has been lodged, the planning agreement and public submissions made in relation to that planning agreement will also be considered by the relevant planning officer in the assessment of the planning proposal and report to Council, as part of the overall merit assessment.

This will be a separate arm's length assessment to that undertaken by the project manager.

The fact that the Council's project manager supports the terms of a proposed planning agreement will not necessarily mean that the development application or planning proposal, to which the proposed planning agreement relates, is acceptable on its merits. The development proposal must be acceptable on planning grounds in the overall merit assessment.

The weight given to the proposed planning agreement and public submissions made in relation to that agreement is a matter for the Council acting reasonably.

6.5. Council's Annual Report and Register

As required under the Act, Council will include in its annual report particulars of compliance with and the effect of any planning agreement to which it is a party, and which is in force during the year to which the annual report relates.

As required by the Regulation, Council will keep a register of any planning agreements that apply to land within Council's area, whether or not the Council is a party to a planning agreement. Council is required to record in the register the date an agreement was entered into and a short description of the agreement (including any amendment).

Council will make the following available for public inspection (free of charge) during ordinary office hours:

- The planning agreement register kept by the Council;
- Copies of all planning agreements (including amendments) that apply to the area of the Council; and
- Copies of the explanatory notes relating to those agreements or amendments.

7. Implementation and Management

7.1. Preparation of the Planning Agreement

The developer/relevant party will prepare a planning agreement relating to a particular planning proposal request or development application. The developer/relevant party is to use the standard template at Appendix B as a basis, as this reflects the requirements set out in these Guidelines. Note that the template in these Guidelines is limited to basic clauses, and additional or amended clauses may be required. This will be considered on a case by case basis.

Council will require a planning agreement to make provision for payment by the developer of Council's costs of and incidental to, preparing and entering into the planning agreement as well as administering and enforcing the planning agreement. Costs will typically include legal costs, independent advice and reports and all costs relating to valuation and determination of the development contribution and registration on title.

In order to streamline the process, the proponent should ensure that:

- Negotiations are held as early as possible in the planning process, to avoid delays that result from the duplication of processes such as exhibition processes
- The formal letter of offer is updated consistent with the outcome of the negotiations
- The planning agreement is drawn up using the template at Appendix B as a basis.

7.2. Entering into a Planning Agreement

A planning agreement is entered into when it is signed by all of the parties. Council will enter into a planning agreement only if so resolved by Council.

Council can enter a planning agreement at any time after the planning agreement is publicly notified for the required period in accordance with the Act and Regulation and the submissions have been considered.

For a planning proposal Council will require the execution of the planning agreement as soon as practicable after the post-Gateway exhibition.

If the planning agreement relates to a development application, the Council will generally require the planning agreement to be entered into prior to the issue of development consent. The planning agreement will become operable on issue of the development consent.

7.3. When will Planning Obligations arise?

Council will generally require a planning agreement to provide that the developer's obligations in terms of delivery of development contributions under the planning agreement take effect:

- In accordance with the terms of the consent for the development application that is related to the planning agreement and the terms of the planning agreement; or
- For a planning proposal upon notification (gazettal) of the amendment to an Environmental Planning Instrument (such as an LEP).

The planning agreement will contain the specific timing requirements for each public benefit proposed (see Appendix B).

7.4. Provision of Security under a Planning Agreement

Council will require a planning agreement to make provision for security to cover the developer's obligation under the agreement. The form of security will generally include an unconditional bank guarantee, not time limited, from an Australian bank in favour of Council to the full value of the developer's obligation under the planning agreement and on terms otherwise acceptable to Council.

Council may also require a caveat on the land, to ensure that the land cannot be transferred until the bank guarantee is provided and the planning agreement is registered on title.

Council will remove the caveat if the security is no longer required, for example, if the development application is refused or the planning proposal is not to be progressed.

7.5. Notations on Certificates under s.149(5) of the Act

Council will generally require a planning agreement to contain an acknowledgement by the developer that Council may, at its absolute discretion, make a notation about a planning agreement on any zoning certificate issued under s.149 of the Act relating to the land the subject of the planning agreement or any other land.

7.6. Registration of Planning Agreements

Section 93H of the Act permits a planning agreement (or any amendment or revocation of a planning agreement) to be registered on the title of the land to which the planning agreement relates if each person with an interest in the land agrees to its registration. If a planning agreement has been so registered, it is binding on, and enforceable against, the owner of the land as if that owner had entered into the planning agreement.

Council will require the planning agreement to contain a provision requiring the developer to register the planning agreement on title pursuant to s93H of the Act, if the requirements of that section are satisfied. The planning agreement will include provisions to ensure that this occurs as soon as possible following any approval of the development application or adoption of the LEP Amendment.

To facilitate this, the developer is to provide Council with the written agreement to the registration of the agreement of each person with an estate or interest in the land to which the planning agreement applies as a precondition to the execution of the planning agreement by Council.

7.7. Goods and Services Tax (GST)

Unless otherwise expressly stated, prices or other sums payable or consideration to be provided under or in accordance with this document are exclusive of GST.

7.8. Hand-over of Works

The Council will generally not accept the hand-over of a public work carried out under a planning agreement unless a number of requirements have been met. These are likely to include matters such as the following:

- Specifications to Council's satisfaction
- Appropriate insurance of the works
- Warranties for works and fixtures
- Submission to Council of a certificate to the effect that the work has been carried out in a workmanlike manner and completed in accordance with the planning agreement and any applicable development consent
- Works as executed plan
- Occupation certificate
- Inspection of the work and provision by Council of a written notice that the work is complete.

If the hand-over of works involves land not owned by Council, it must be dedicated to Council free of all encumbrances.

The Council will also require the planning agreement to provide for a defects liability period during which any defects must be rectified at the developer's expense.

7.9. Management of Land or Works after Hand-over

If a planning agreement provides for the developer, at the developer's cost, to manage or maintain land that has been dedicated to the Council or works that have been handed-over to the Council, the Council will generally require the parties to enter into a separate implementation agreement in that regard which may require a bond.

The failure of the parties to reach agreement in relation to management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the planning agreement.

7.10. Dispute Resolution

A planning agreement must provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

7.11. Monitoring and Review of a Planning Agreement

Council will routinely monitor the performance of the developer's obligations under a planning agreement and report them in accordance with the Act. This may include Council requiring the developer (at the developers cost) to report periodically to Council on its compliance with obligations under the planning agreement.

Council will require the planning agreement to contain a provision establishing a mechanism under which the agreement is periodically reviewed with the involvement of all parties. The purpose of the review is to manage the developer's delivery of the developer's obligations to Council and their timely delivery.

Council will require a planning agreement to contain a provision requiring the parties to use their best endeavours to agree on any modification to the agreement having regards to the outcome of the review.

7.12. 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 planning agreement; or
- b. The development consent to which the planning agreement relates has lapsed; or
- c. The performance of the planning agreement has been frustrated by a significant event or events beyond the reasonable control of the parties; or
- d. The developer has fully and completely assigned the developer's interest under the planning agreement in accordance with its terms and the assignee has become bound to the Council to perform the developer's obligations under the planning agreement; or
- e. The Minister for Planning or the Land and Environment Court revokes or modifies a development consent to which a planning agreement relates.

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

7.13. Assignment and Dealings by the Developer

Every planning agreement must be registered.

Every planning agreement must include a provision that the developer will not assign of any or all of the developer's rights or obligations under the planning agreement, nor have any dealing in relation to any part or the whole of the land the subject of the planning 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 planning agreement as if they were a party to the original planning agreement;
- 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;
- c. The developer has, at no cost to the Council, first procured replacement security from the assignee. The Council may require the assignee to provide more security than the original developer if the assignee does not have the same financial standing as the original developer; and
- d. The developer is not in breach of the planning agreement.

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

Appendices

Appendix A – Letter of offer

In order to enable an accurate understanding of the public benefits proposed and any offsets sought by the developer, a letter of offer must:

- a. Be in writing;
 - b. Be addressed to the planning authority to whom it is made;
 - c. Be signed by or on behalf of all parties to the planning agreement other than the planning authority to whom the offer is made;
- and should
- d. Outline in sufficient detail to allow proper consideration by the planning authority the matters required to be included in a planning agreement as specified in section 93F(3) of the *Environmental Planning and Assessment Act 1979*;
 - e. Address in sufficient detail to allow proper consideration by the planning authority the matters outlined in these Guidelines; and
 - f. Outline in sufficient detail to allow proper consideration by Council of all other key terms and conditions proposed to be contained in the planning agreement.

Appendix B - Template Planning Agreement between Council and Developer

Separate document

[Trim # T056570/2017]

Appendix C - Explanatory Note Template

Clause 25E(1) of the Environmental Planning and Assessment Regulation

Note: This template has been drafted for a draft planning agreement, but applies equally to a proposed amendment or revocation of a planning agreement.

Explanatory Note

Draft Planning Agreement under s93F of the *Environmental Planning and Assessment Act 1979*

1 Parties

Cumberland Council (Planning Authority)

(Planning Authority)

(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 The assessment of the merits of the draft Planning Agreement:

- a) How the draft Planning Agreement promotes the objects of the *Environmental Planning and Assessment Act 1979*
- b) How the draft Planning Agreement promotes the public interest
- c) Development corporations – how the draft Planning Agreement promotes its statutory responsibilities
- d) Public Authority – how the draft Planning Agreement promotes the objects (if any) of the Act under which it is constituted
- e) How the draft Planning Agreement promotes the elements of Council's charter under Section 8 of the *Local Government Act 1993*
- f) The planning purposes served by the draft Planning Agreement and whether the Agreement provides for a reasonable means of achieving that purpose

- g) Whether the draft Planning Agreement conforms with Council's capital works program
- h) Timing and delivery of the public benefits – especially in relation to the issue of a construction certificate, occupation certificate or subdivision certificate.
- i) The impact (positive or negative) of the proposed draft Planning Agreement on the public or any section of the public.

6 Other Matters

Signed and Dated by All Parties

Appendix D – Potential Public Benefits

The following is a list of infrastructure, facilities and services that could constitute a material public benefit. The development contribution needs to be beyond what would normally be required for the development (eg through the DCP or consent conditions).

The list is not exhaustive and developers are encouraged to discuss these or other public benefits that may be included in a planning agreement. The suitability of the particular proposed benefit/s will still need to be considered on a case by case basis and in line with Council's plans and strategies.

Planning agreements may involve monetary contributions, land dedication, partial or full construction of new facilities, expansion, upgrades, augmentations, embellishments, fit-outs and resourcing of existing facilities or any other public benefit as agreed to by Council.

- Infrastructure**
- Accessibility improvements – accessible under cover parking, kerb ramps, modifications to public buildings or areas, accessible toilets, walkways, lighting
 - Open space – parks and green spaces, squares, sports courts, playing fields and supporting infrastructure
 - Drainage and storm water works - drainage amplification, integrated water treatment facilities, large scale detention basins, overland flow paths and storm water channel improvements and sediment control measures
 - Water and energy minimising devices
 - Flood management / mitigation works
 - Roads – design and construction
 - Traffic management measures - bus and traffic turning lanes, public and “green” transport outcomes
 - Pedestrian and cycleway linkages, through site links and footpaths, construction of cycleways
 - Bicycle parking stations/bike racks and lockers
 - Bridges (vehicular and pedestrian)
 - Public transport – works that facilitate and enhance existing public transport facilities such as transport interchanges, bus layovers and turning lanes, bus stops and shelters

	New public transport - light rail, shuttle buses
	Community-scale energy generation facilities
	Undergrounding of overhead power lines
	Telecommunication networks
Public, community facilities	Community facilities – e.g. multi-purpose meeting rooms, halls, libraries, galleries
	Child care centres
	Public toilets
	Youth spaces and recreation facilities (eg basketball, soccer)
	Performance, rehearsal, event spaces
	Civic spaces
	Public, commuter parking
	Education, health facilities
	Sport, recreation, leisure and activity centres (indoor and outdoor)
	Co-working spaces
Public domain, open space improvements	Paving – paths, streets and open space areas
	Planting– streets and open space areas
	Furniture, facilities, lighting – shaded seats, bins, banners, tables, kiosk, shelter, water bubblers, lockers
	Kerbs and gutters
	Treatment, features, public art in public places
	Play environments – accessible, all abilities and for range of ages, adventure equipment, landscaping for nature play, hard stand for mobility devices, water play, soft-fall, sand
	Restoration and management of natural areas - Duck River a key priority
	Signage including suburb identification, way finding, parking, interpretation and information signs for pedestrians, cyclists and vehicular users

Other

Affordable housing

Affordable rental spaces - labs, offices – for business, research, community services and creative industries;

Incubator space and ancillary spaces/facilities for business, research, social or community enterprise and creative industries

Aboriginal site protection

Heritage restoration works

Funding for major studies

Cash contributions for any of the above

Provision for maintenance in perpetuity – e.g. pest control, bush regeneration

Appendix E - Matters to be considered in the assessment of the value of land to be dedicated

In addition to s.3.3 of these Guidelines, Council will also consider the following matters (without limitation) in assessing the value of the land to the community:

- i. The extent, if any, to which any development potential attaching to that part of the land to be dedicated can be incorporated elsewhere within the development
- ii. Whether the land proposed to be dedicated has been identified by Council in any Local Environmental Plan, Development Control Plan, Development Contributions Plan or other policy of the Council
- iii. The location of the land in relation to a centre and good public transport
- iv. Whether the land will create or improve accessibility within the area whether by pedestrians, cyclists, private vehicles, public transport or any combination of these
- v. Connectivity to existing open space, riparian corridor or bushland and whether the land can be consolidated into that area
- vi. Whether the land supports the habitat of threatened or endangered species of fauna or endangered ecological communities of flora
- vii. Any factors which may affect the usability of the land such as size, shape and topography, flood liability, soil and geotechnical conditions, potential contamination, easements, public accessibility and safety, proximity to existing uses, the current use of the land, the cost of embellishment or construction of any proposed facility on the land
- viii. The potential to carry out works within a reasonable time and, as a consequence, any measures required to secure or maintain the land in the event that works cannot be carried out for some time
- ix. In the case of a material public benefit not anticipated by a Contributions Plan and proposed to be offset against monetary contributions, the impact on the achievement of works identified within any adopted Contributions Plan of Council
- x. The on-going costs to the Council of care, control and management both prior to and after any improvement works are carried out on the land
- xi. Any other relevant matter in the circumstances of the case.

Appendix F – Use of Residual Land Values to Ascertain Value Uplift

Source: SGS Economics and Planning (August 2017) *Economic Advice on Value Sharing for Planning Agreements*

Residual land value (RLV)

Residual land valuation is an approach used to establish the value of land based on its development potential. Simply put, residual land value (RLV) is the total revenue from the potential development minus all development costs, including the developers’ profit margin.

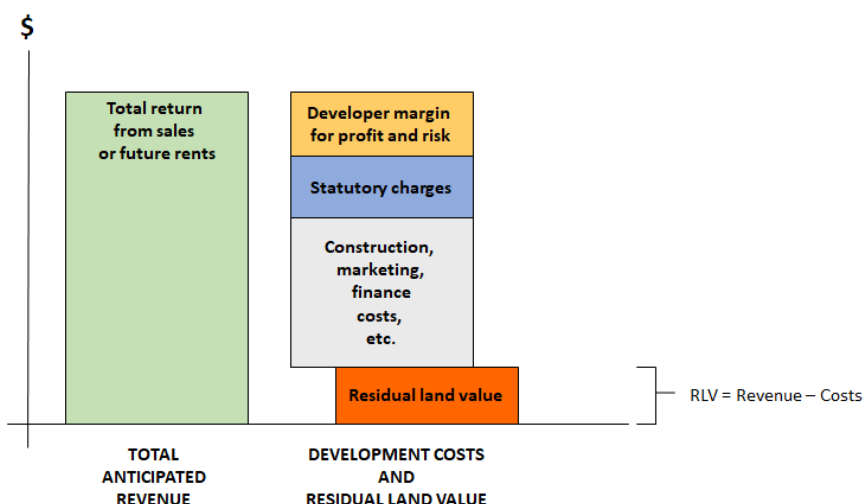
The cost of land is deliberately excluded as the primary purpose of the residual land value calculation is to determine how much the land is worth for the hypothetical development. All other development costs are included: the developers margin for profit and risk, construction and site preparation costs, professional fees, marketing and finance costs, statutory fees and charges including Section 94 payments, inclusionary requirements and a consideration for impact mitigation measures (see Figure 1).

A more thorough definition of RLV would be:

The price a rational developer would pay for a development site, based on the highest and best uses (e.g. the maximum amount of floor space allowed by the existing planning controls), and an average target rate for profit and risk.

This valuation approach is also referred to as the ‘hypothetical development method’ by the NSW Valuer General.⁵

Figure 1: Residual land value approach to valuing land



⁵ NSW Valuer General (2017) Valuation of high density residential land July 2017

Residual land values will vary between sites, based on the specific location, amenity, size and shape, and other idiosyncrasies. Regardless of these variations, valuers can estimate average residual land values for particular precincts, centres, or suburb using data on site sales and/or feasibility studies. These average RLVs can also be expressed as residual land value per square metre of floor space for different types of development.

For example, say the residual land value of a site on which 1,000 sqm of commercial development is permissible is \$500,000, then the residual land value per square metre of commercial development is \$500. Or if the RLV of a site that can accommodate 20 apartments is \$2,000,000, the RLV per dwelling would be \$100,000, or, assuming the gross floor space per dwellings in 100 sqm, \$2000 per square metre of gross floor space.

In both these examples it follows that if the site was twice as large, or allows the planning controls allowed twice the density, the RLV of the site would also double.

Uplift in residual land value resulting from planning changes

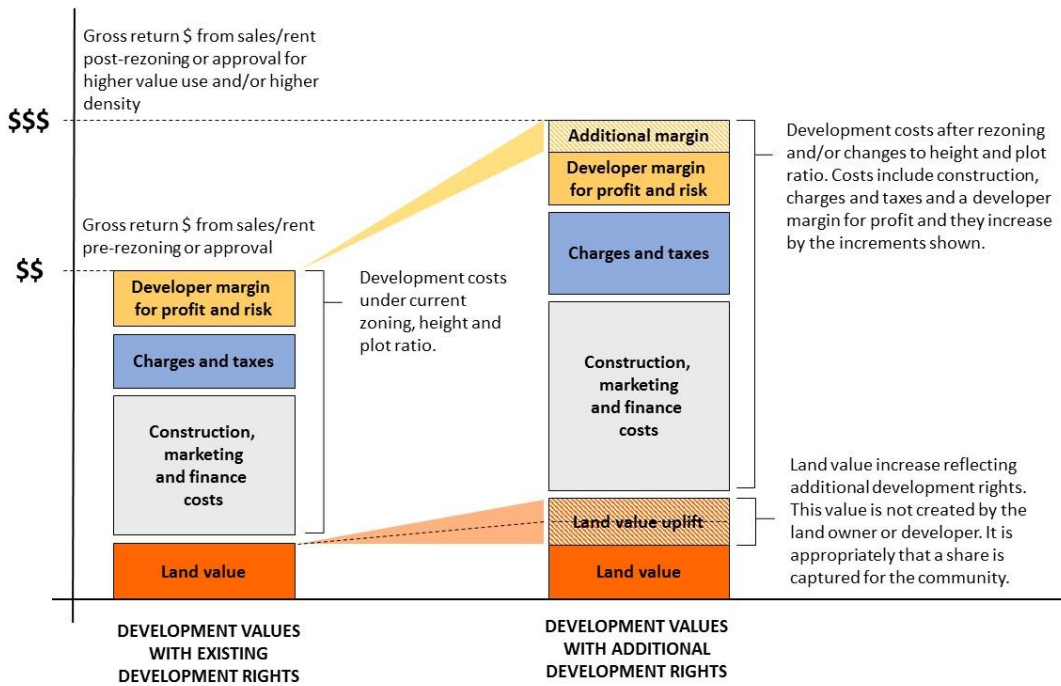
When a particular parcel of land is rezoned or has its development potential increased, the land owner is effectively granted additional 'development rights' which are not available to all land owners. This represents a 'rationing' of development rights which the community allows or understands as appropriate planning, as opposed to a 'free for all' which would result if there were no restrictions on development rights.

This rationing of development rights also creates special development opportunities for particular land owners. The value of these special opportunities – so-called 'monopoly rents' – is reflected in an increase in land value. For example, other things being equal, land approved for a multi-storey apartment building will be worth more than otherwise equivalent land designated for a low-rise industrial building.

After a change to the zone or other development controls, all costs, which include user pays, impact mitigation and inclusionary development contributions, as well as the profit expectation, will increase for the higher value and denser development. All other things being equal, the residual land value can also be expected to rise. The figure below highlights these concepts, and shows pre- and post-rezoning 'development values'.

This increase in land value (orange hatched box in Figure 2 is generated wholly independently of any investment by the land owner or developer and is separate from the profit received by the developer (yellow hatched box in Figure 2). It is therefore reasonable that a share of the uplift in value be extracted for broader community benefit.

Figure 2: Residual land value and additional development rights



Appendix G – Precincts and Schedule of Residual Land Values

For land that is zoned IN1, IN2, B5, B6 or B7, the RLV estimates will be based on the land value per square metre of land area, as per the rates in Table 1 below. For all other land use zones, the RLV will be estimated using the land value per square metre of gross floor space, as per the rates in Table 2 below. The extent of the precincts is shown in Figures 1-3 overleaf.

Table 1. Residual Land Values – Industrial and enterprise zones (per square metre site area)

Precinct	IN1	IN2	B5	B6	B7
Precinct 1 - Wentworthville Town Centre 'core'					
Precinct 2 - Wentworthville Town Centre 'fringe'					
Precinct 3 - Wentworthville Town Centre 'residential'					
Precinct 4 - Westmead					
Precinct 5 - Holroyd		\$400			
Precinct 6 – Merrylands Town Centre					
Precinct 7 - Guildford 'residential'					
Precinct 8 - Parramatta Road, Auburn				\$800	
Precinct 9 - Auburn Town Centre, North					
Precinct 10 - Auburn Town Centre, South					
Precinct 11 – Lidcombe Town Centre					

Source: Charter Keck Cramer, 2017, in SGS economics and Planning (2017) *Economic Advice on Value Sharing for Planning Agreements*. The values are ex-GST and based on the assumption that no Special Infrastructure Contributions are payable.

Table 2. Residual land values – Housing and employment zones (per square metre gross floor area)

Precinct	Detached dwellings	Town-houses	Apartments	Retail	Commercial
Precinct 1 - Wentworthville Town Centre 'core'			\$2,200	\$900	\$400
Precinct 2 - Wentworthville Town Centre 'fringe'			\$2,200	\$600	\$300
Precinct 3 - Wentworthville Town Centre 'residential'	\$2,850	\$2,350	\$2,200		
Precinct 4 - Westmead	\$2,850	\$2,350	\$2,200		
Precinct 5 - Holroyd		\$1,650	\$1,500		
Precinct 6 - Merrylands Town Centre			\$1,700	\$1,000	\$400
Precinct 7 - Guildford 'residential'	\$2,250	\$1,750	\$1,500		
Precinct 8 - Parramatta Road, Auburn			\$1,500	\$500	\$150
Precinct 9 - Auburn Town Centre, North	\$2,850	\$2,350	\$2,200	\$400	\$300
Precinct 10 - Auburn Town Centre, South			\$2,200	\$800	\$300
Precinct 11 - Lidcombe Town Centre		\$2,000	\$1,750	\$800	\$300

Source: Charter Keck Cramer, 2017, in SGS economics and Planning (2017) *Economic Advice on Value Sharing for Planning Agreements*. The values are ex-GST and based on the assumption that no Special Infrastructure Contributions are payable.

Notes

- i. The nominated per square metre rates in the Residual Land Value table above are averages for the relevant precincts.
- ii. The Residual Land Values will be updated and re-published on an as needs basis to account for changes in property markets that will influence the residual land values over time.
- iii. For all areas outside of the precincts in the Residual Land Value table (as shown in the maps below), the developer will be required to provide the Council with sufficient details, costs and valuations to determine the applicable residual land values under the existing and proposed planning controls.

Figure 1. Land value precincts 1 to 4

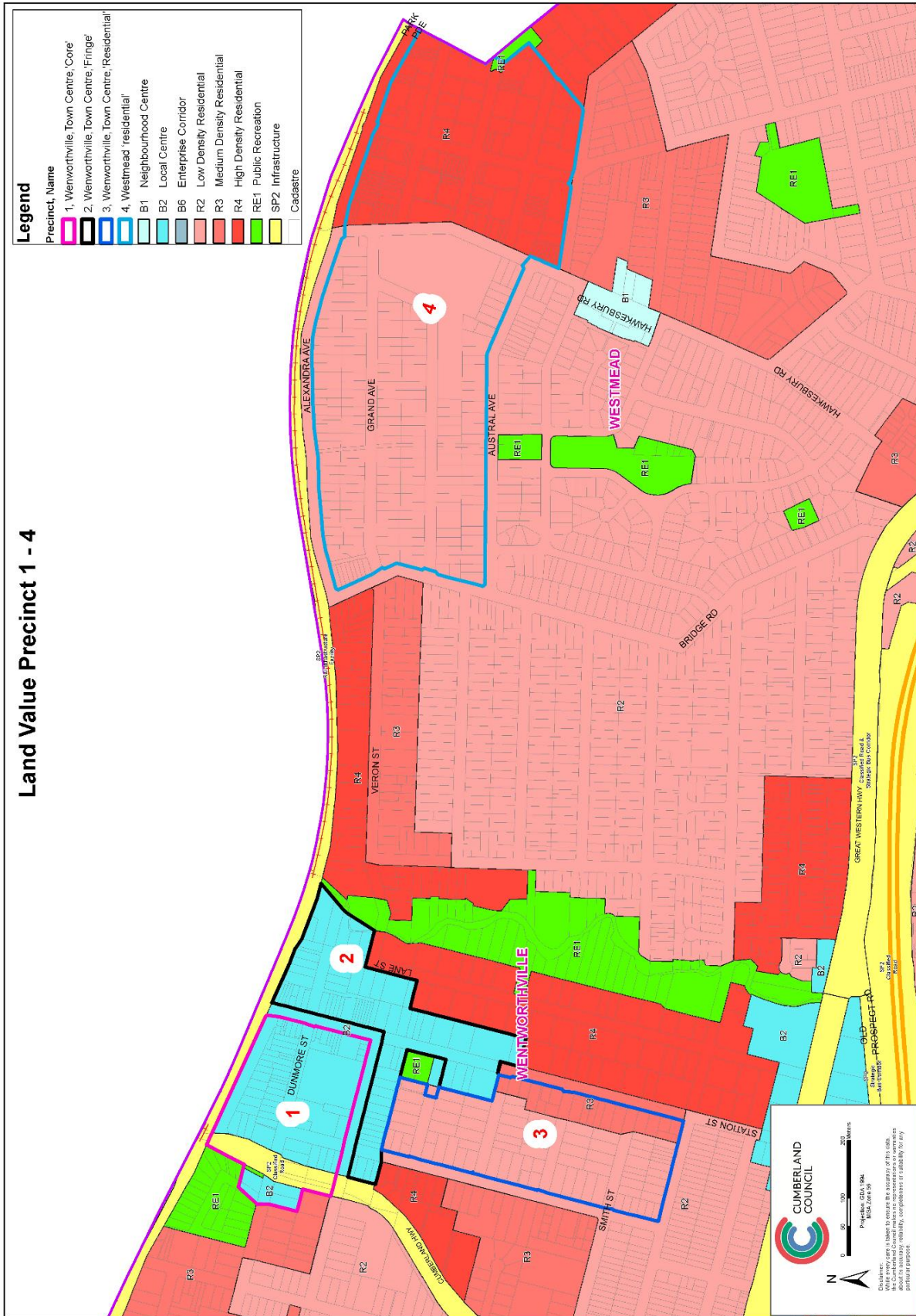


Figure 2. Land value Precincts 5 to 7

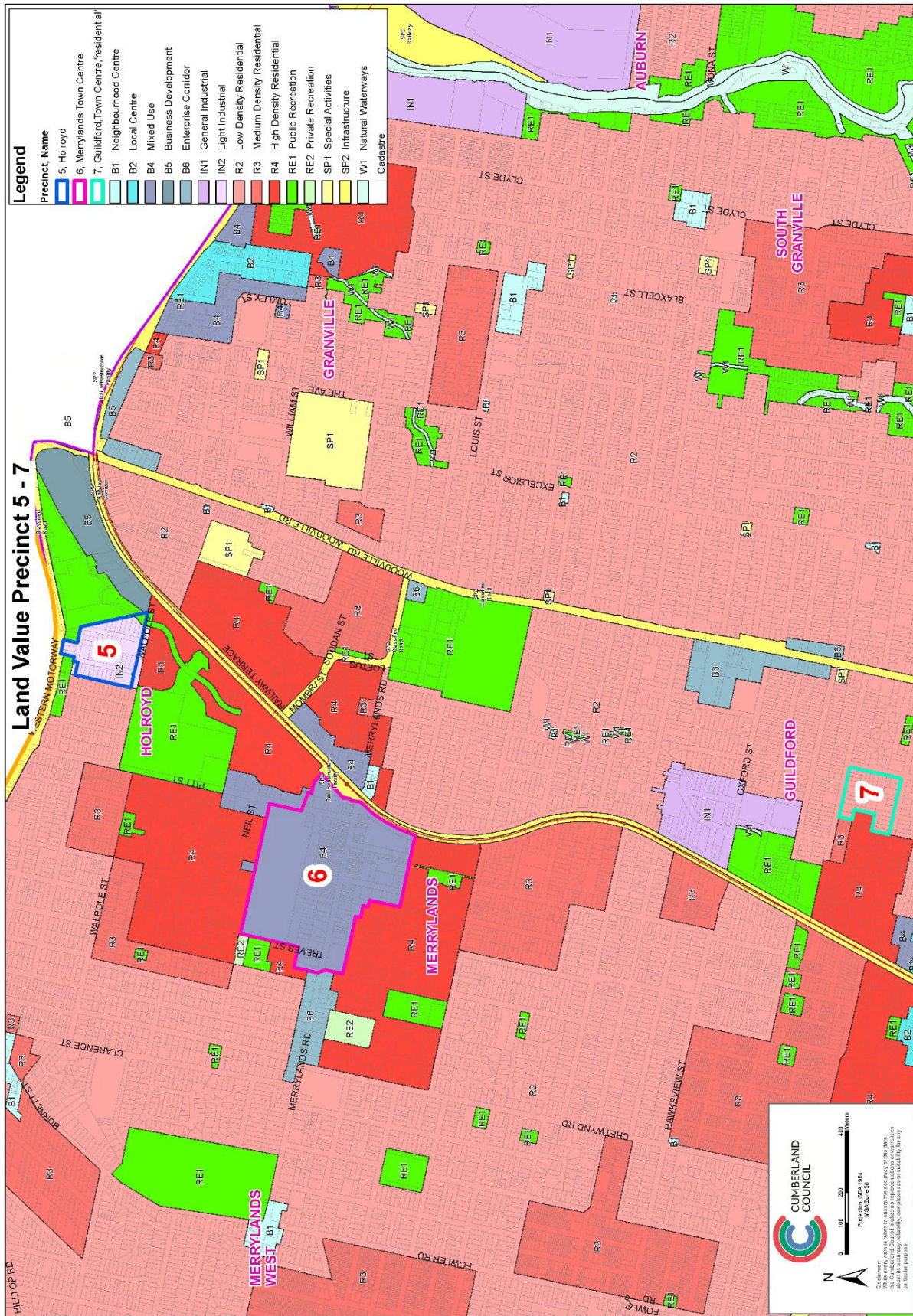
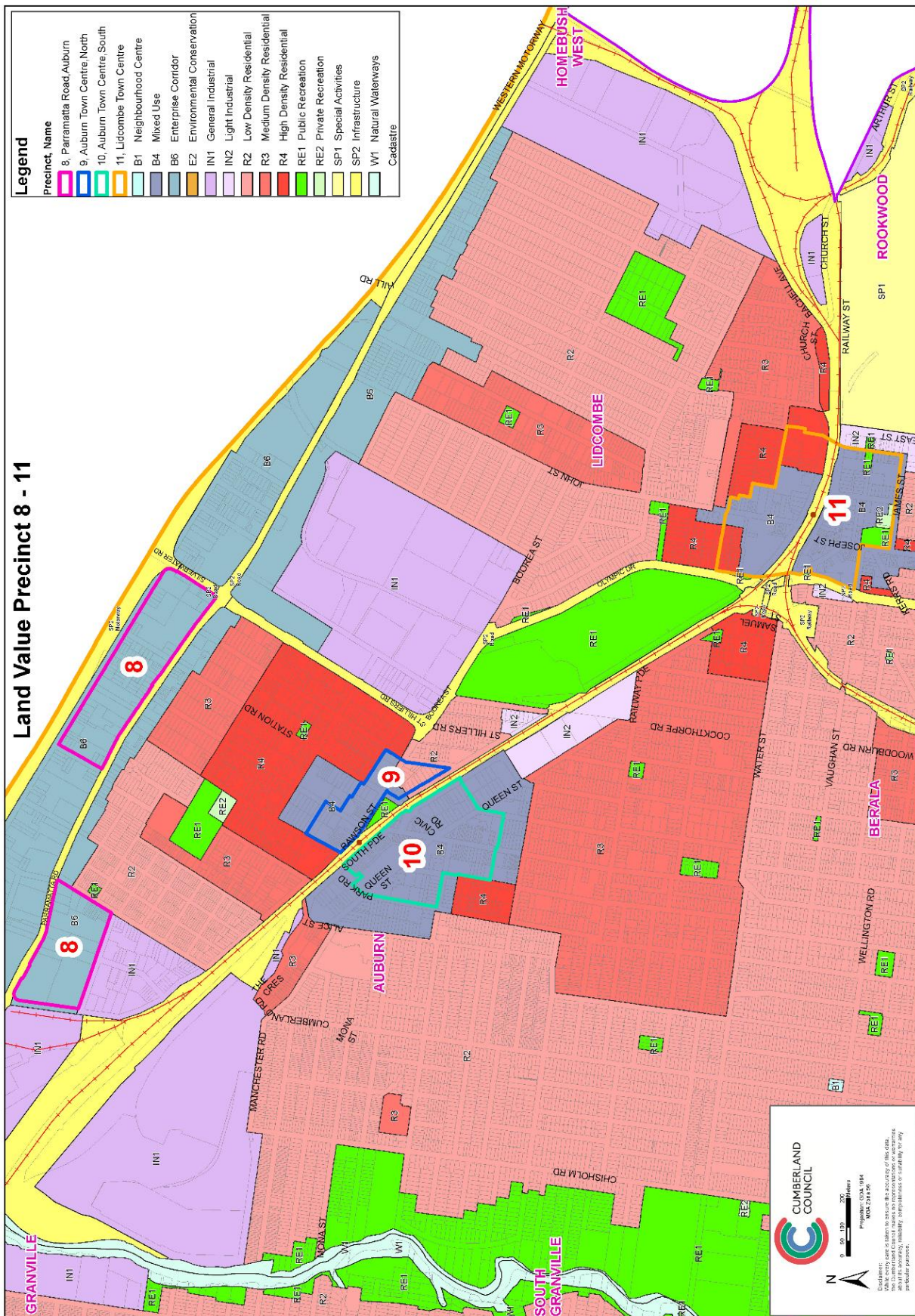


Figure 3. Land value precincts 8 to 11



Appendix H - Worked examples of calculating development contributions

These examples are based on the pre-scheduled residual land values in Appendix G. The following examples demonstrate how the expected development contribution under a planning agreement is calculated in three anticipated scenario types. Number references shown as (3), (8) etc. refer to lines numbered in the tables following each step-by-step outline.

Note: The formula in Section 3.5(c) of these Guidelines is used for all calculations.

Example 1 *Mixed use site - Change in permissible height with no change to zone or FSR*

This example includes:

- Calculations for a mix of uses;
- Calculations where a change results in greater potential to achieve a permitted FSR.

Let's assume the relevant precinct is Precinct 6 (Merrylands Town Centre) and the site is one where the existing height control does not allow the maximum FSR shown on the FSR map in the LEP to be achieved. In this case the height control rather than FSR restricts the development potential of the site, as the maximum FSR could not be achieved while still complying with local planning provisions and the requirements of the *Apartment Design Guideline*.

In this case the RLV(1) and RLV(2) are both calculated within the parameters of the amount and type of permissible floor space. Let's say the permissible and proposed floor space and height are in accordance with the key parameters below.

RLV(1) is based on an assumption of achieving an FSR of 7.5:1 within the existing maximum height of 65 metres. The actual figure would be derived from a scheme prepared by the proponent that is wholly compliant with the existing planning controls, and based upon a building envelope compliant with the *Apartment Design Guide*. (The maximum FSR could still potentially be achieved within the existing controls if, for example, a larger proportion of the floor space is commercial development.)

In both the before and after cases, there is a requirement for 1.7:1 of floor space to be non-residential. This has been split equally between retail and commercial floor space for the purpose of estimating the RLV, with the rest of the achievable FSR allocated to residential floor space.

Key parameters for the calculation

	Existing	Proposed
FSR	8.5:1 but a height compliant scheme shows that an FSR of 7.5:1 can only be achieved where the maximum proportion of residential is proposed	8.5:1
Height	65m	77m
Minimum non-residential floor space	1.7:1	1.7:1

Land value uplift and value sharing contribution

Line numbers, eg (4) (11) refer to the table following the step by step outline. The step-by-step application of the value sharing formula is as follows:

- **RLV(1) is calculated as follows:**

Retail

- Multiply the site area (1) by the FSR of the retail floor space component (2). This gives the current floor space for the retail use (5).
- Then multiply by the appropriate RLV/sqm rate (9). The rate for retail floor space in this Precinct is found in Appendix G Table 2 and is \$1,000. This gives the RLV for the retail use (12).

Commercial

- Multiply the site area (1) by the FSR of the commercial floor space component (3). This gives the current floor space for the commercial use (6).
- Then multiply by the appropriate RLV/sqm rate (10). The rate for commercial floor space in this Precinct is found in Appendix G Table 2 and is \$400. This gives the RLV for the commercial use (13).

Apartments

- Multiply the site area (1) by the FSR of the residential floor space component (4). This gives the achievable floor space for the residential use (7).
- Then multiply by the appropriate RLV/sqm rate (11). The rate for residential floor space in this Precinct is found in Appendix G Table 2 and is \$1,700. This gives the RLV for the apartment use (14).

Total

Note: The total floor space ratio for the three land uses combined is 7.5:1.

- The amounts from each of these calculations is added together [(12)+(13)+(14)] to give the total residual land value estimate, RLV(1) (15).

- **RLV(2) is calculated as follows:**

Retail

- Multiply the site area (1) by the FSR of the proposed retail use (16). This gives the proposed floor space for the retail use (19).
- Then multiply by the appropriate RLV/sqm rate (23). The rate for retail floor space in this Precinct is found in Appendix G Table 2 and is \$1,000. This gives the RLV for the retail use (26).

Commercial

- Multiply the site area (1) by the FSR of the proposed commercial use (17). This gives the proposed floor space for the commercial use (20).
- Then multiply by the appropriate RLV/sqm rate (24). The rate for commercial floor space in this Precinct is found in Appendix G Table 2 and is \$400. This gives the RLV for the proposed commercial use (27).

Apartments

- Multiply the site area (1) by the FSR of the proposed apartment use (18). This gives the proposed floor space for apartments (21).
- Then multiply by the appropriate RLV/sqm rate (24). The rate for residential floor space in this Precinct is found in Appendix G Table 2 and is \$1,700. This gives the RLV for the proposed apartment use (28).

Total

Note: The total floor space ratio for the three land uses combined is 8.5:1.

- The amounts from each of these calculations is added together [(26)+ (27)+ (28)] to give the total residual land value estimate, RLV(2) (29).
- The **uplift** in residual land value (30) is RLV(2) minus RLV(1); ie line (29) minus line (15).
- The **value sharing contribution** (31) is 50% of the uplift (30).

A. Base site value

Precinct		6	Merrylands
1	Site area		3,000
	Assumed achievable FSR		7.50
	Valuation on land area or floor space?		Floor space
2	Current provisions - Retail use FSR		0.85
3	Current provisions - Commercial use FSR		0.85
4	Current provisions - Achievable Apartments FSR		5.80
5	Current floor space - Retail use		2,550
6	Current floor space - Commercial use		2,550
7	Current achievable floor space - Apartments		17,400
8	Total floor area based on achievable FSR		22,500
9	RLV/sqm land area/GFA Retail use	\$	1,000
10	RLV/sqm land area/GFA Commercial use	\$	400
11	RLV/sqm land area/GFA Apartments	\$	1,700
12	RLV - Retail use	\$	2,550,000
13	RLV - Commercial use	\$	1,020,000
14	RLV - Apartments	\$	29,580,000
15	RLV (1) based on existing planning controls	\$	33,150,000

B. Value with LEP change

	FSR (proposed)		8.50
	Land area or floor space valuation approach?		Floor space
16	Proposed Retail use FSR		0.85
17	Proposed Commercial use FSR		0.85
18	Proposed apartment use FSR		6.80
19	Proposed floor space - Retail use		2,550
20	Proposed floor space- Commercial use		2,550
21	Proposed floor space- Apartments		20,400
22	Total floor area based on LEP amendments		25,500
23	RLV/sqm land area/GFA Retail use	\$	1,000
24	RLV/sqm land area/GFA Commercial use	\$	400
25	RLV/sqm land area/GFA Apartments	\$	1,700
26	RLV- proposed Retail use	\$	2,550,000
27	RLV - proposed Commercial use	\$	1,020,000
28	RLV- proposed Apartments	\$	34,680,000
29	RLV(2) based on LEP amendments	\$	38,250,000
30	Uplift	\$	5,100,000

C. Value sharing contribution

31	50% of uplift	\$	2,550,000
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Example 2

Zoning change from industrial or enterprise lands to a zone permitting high density residential development (apartments), for example where an adopted strategy recommends rezoning to R4. Let’s assume the relevant precinct is Precinct 5, Holroyd.

In this case the RLV(1) is calculated on the basis of the land area, where as RLV(2) is calculated on the basis of the amount and type floor space that would permissible under the new zoning and FSR.

Other key parameters for the calculation

	Existing	Proposed
FSR	None	1.2:1
Height	None	15m

Land value uplift and value sharing contribution

The step-by-step application of the value sharing formula is as follows (numbers refer to the table below):

• **RLV(1) is calculated as follows:**

- Multiply the site area (1) by the **RLV/sqm land area (2)** (From Appendix G Table 1 the rate is \$400. This results in the current residual land value estimate (3).

• **RLV(2) is calculated as follows:**

- Multiply the site area (1) by the proposed floor space ratio (4). This gives the new permissible floor space (5)
- Multiply the floor space (5) by the appropriate RLV/sqm rate for the proposed use (6). The rate for apartments in this Precinct is found in Appendix G Table 2 and is \$1,500. This gives the residual land value estimate for the proposed use (7).

• The **uplift** in residual land value (8) is RLV(2) minus RLV(1); ie line (7) minus line (3).

• The **value sharing contribution (9)** is 50% of the uplift (8).

A. Base site value		
Precinct	5	Holroyd
1 Site area	sqm	3,000
Site FSR		none
Valuation on land area or floor space?		Land area
Current zone/use		Industrial or enterprise zone
FSR of current use		-
Floor space before		-
Floor area based on current FSR		No FSR
2 RLV/sqm land area	\$	400
3 RLV (1) based on existing planning controls	\$	1,200,000
B. Up-zoned value		
FSR (proposed)		1.20
Land area or floor space valuation approach?		Floor space
Proposed zone/use		Apartments
4 FSR of proposed use		1.20
5 Floor space after / use		3,600
6 RLV/GFA proposed use	\$	1,500
Value after - proposed use	\$	5,400,000
7 RLV (2) based on up-zoning	\$	5,400,000
8 Uplift	\$	4,200,000
C. Value sharing contribution		
9 50% of uplift	\$	2,100,000

Appendix I - Indicative Flowchart: VPA related to a Development Application

Pre-lodgement

- Developer and relevant stakeholders meet with Council officers with preliminary plans
- Discuss whether a planning agreement is suitable
- Group Manager (or higher officer) decides whether to negotiate a draft VPA

Key negotiation phase

- Developer provides letter of offer in accordance with Attachment A.
- Contacts, timetables and protocols agreed
- Council seeks independent advice where required
- Council decides whether independent facilitator required
- Council seeks legal advice
- Negotiations on terms of agreement – minutes of meetings taken
- Consultation with agencies as relevant
- Developer prepares the proposed draft VPA using the template at Attachment B and includes all material terms.

Application lodged

- Developer lodges DA with an updated letter of offer and the draft VPA
- Council may seek further legal advice on the Draft VPA
- Further negotiation on specific terms if required
- Jointly prepare explanatory note.

Public notification

- Council exhibits Draft VPA for a minimum of 28 days, concurrently with and in the same manner as the related DA and in accordance with this Policy
- Council staff review submissions
- Negotiation of amendments if required
- Any amendments may require re-notification.

Report and resolution

- Council staff prepare a report on the VPA to the General Manager who will determine whether it should be considered by the Independent Hearing and Assessment Panel/Council
- GM (or Council) resolves whether to support the VPA. If the VPA is supported, the DA (with the associated VPA) will be referred to Council or the relevant panel for determination.

Implementation

- Add VPA to Council's VPA register
- Implement provisions of the VPA.

Appendix J- Indicative Flowchart: VPA related to a Planning Proposal

Pre-lodgement

- Developer and relevant stakeholders meet with Council officers with preliminary plans
- Developer provides letter of offer in accordance Attachment A
- Developer and Council staff discuss if a planning agreement is suitable in the circumstances
- Group Manager (or higher officer) decides whether to negotiate a draft VPA

Lodgement

- Developer lodges planning proposal request with formal letter of offer in accordance with Attachment A

Preliminary exhibition

- Council exhibits the planning proposal request including the letter of offer, (or Draft VPA if prepared) in accordance with Council's *Planning Proposal Notification Policy*
- Consultation with agencies as relevant
- Council staff review submissions

Negotiations

- Contacts, timetables and protocols agreed
- Council decides whether independent facilitator required
- Negotiations on terms of agreement – minutes of meetings taken
- Council seeks independent and/or legal advice where required

Report and resolution

- Council staff prepare a report to the Independent Hearing and Assessment Panel and Council
- Council resolves whether to progress the proposal to Gateway, and whether to progress the VPA following Gateway

Gateway Determination

- If Gateway Determination is favourable, a draft VPA is prepared based on the template at Attachment B, if this has not already occurred. Include all material terms
- Further negotiations on specific terms where required
- Council seeks further legal/independent advice where required

Public notification

- Council exhibits Draft VPA for a minimum of 28 days, concurrently with and in the same manner as the related planning proposal and in accordance with the Gateway Determination and this Policy
- Council staff review submissions
- Negotiate amendments if required
- Any amendments may require re-notification

Report and resolution

- Council staff prepare a report on the VPA to the General Manager who will determine whether it should be considered by the Independent Hearing and Assessment Panel/Council. Developer/relevant stakeholder executes (signs) VPA
- The GM or Council resolves whether to support the VPA. If supported, General Manager signs on behalf of Council

Implementation

- Council staff add VPA to Council's VPA register
- Implement provisions of the VPA