



CUMBERLAND
COUNCIL

CUMBERLAND PLANNING AGREEMENTS POLICY

September 2017

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INTRODUCTION

For the most part, Council is the relevant planning authority and consent authority responsible for the urban planning and development of Cumberland. Council also has a responsibility to plan for and ensure the delivery of infrastructure and amenity to support housing and employment growth. Cumberland Council is experiencing a high level of requests for planning proposals and these are commonly accompanied by offers of a planning agreement to contribute towards infrastructure. In addition, Council is introducing provisions in key centres for bonus FSR and/or height in return for development exhibiting design excellence and contributing to improved public domain outcomes. Through this Policy, Council intends to establish a fair, transparent, consistent and accountable approach.

PURPOSE

This Policy sets out Cumberland Council's policy relating to planning agreements under the *Environmental Planning and Assessment Act 1979*.

SCOPE

This Policy applies to planning proposal requests and development applications for land within the local government area of Cumberland Council.

DEFINITIONS

In this Policy, the following terminology is used:

Act means the *Environmental Planning and Assessment Act 1979*

Council means Cumberland Council

Developer is a person who has sought to 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 request.

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 proposal has the same meaning as in the Act.

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

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.

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

Definitions of other terminology related to this Policy are contained within the *Cumberland Planning Agreements Guidelines*.

POLICY STATEMENT

Council will apply this Policy to ensure the appropriate establishment of planning agreements which 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. Planning agreements should be prepared in accordance with this Policy and the *Cumberland Planning Agreement Guidelines*.

OBJECTIVES

The objectives of this Policy are to:

1. Provide an enhanced and more flexible system of development contributions for the Council.
2. Broaden the range and extent of development contributions for public purposes arising from development.
3. Facilitate the provision of public infrastructure, facilities, works, services and amenity outcomes that align with the Council's corporate and strategic planning context.
4. Allow for the flexible delivery of infrastructure for a planning proposal which may have planning merit but be out of sequence with broader strategic and infrastructure planning.
5. 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.
6. Secure off-site benefits for the wider community so that development delivers a net public benefit.
7. Enable development contributions under a planning agreement to fairly apportion the costs and benefits of development.
8. Establish, in conjunction with the *Cumberland Planning Agreements Guidelines*, a fair, transparent, consistent and accountable framework governing the use of planning agreements by Council.

PRINCIPLES

Council's use of Planning Agreements will be governed by the following principles:

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

REQUIREMENTS

Council's policy position in relation to planning proposal requests, development applications and planning agreements is as follows:

1. Council's approach to the consideration of planning agreements will be based on the planning purpose of achieving the community's vision for the Cumberland area as set out in the Community Strategic Plan, as well as Council's infrastructure strategies and other key Council plans and studies.
2. Council expects that planning agreements would be used to secure a commitment to value sharing in circumstances where additional FSR, height or land uses would result in land value uplift.
3. Council expects that planning agreements would be used in circumstances where a developer seeks bonus FSR and/or height in accordance with design excellence provisions, and where public benefits are involved or where an LEP clause provides incentives linked to value sharing.
4. Planning agreements may be used in circumstances where a developer seeks a Clause 4.6 variation to FSR standards that would increase density beyond that planned.
5. Council may consider planning agreements that relate to other planning proposals or development applications.

6. Council would 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 arising from the development proposal. This is exclusive of any impact mitigation requirements or alternative means of discharging s.94 or s94A obligations.
7. The residual land values by land use and by precinct outlined in the Cumberland Planning Agreement Guidelines will guide value sharing in those precincts.
8. Outside the precincts mapped in the Appendices in the Guidelines, Council will seek to value public benefits by requiring an independently verified market valuation by a property valuer for any land and an independently verified cost estimate by a quantity surveyor for works.
9. Planning agreements related to value adding development proposals are to include a contribution towards the implementation of the Duck River Masterplan, equivalent to at least 5% of the total development contribution (ie 5% x 50% x uplift in land value).
10. Planning agreements related to planning proposals that would result in potential value uplift will include a contribution to affordable housing, being at least 5% of any potential additional residential floor space, or where impracticable, an equivalent monetary contribution.
11. Council will seek infrastructure funding and works under a planning agreement in addition to contributions that would apply under s.94 and s.94A of the Act and to any State Infrastructure Contribution due.
12. Council will take into consideration any s.94, s94A or State Infrastructure Contribution in the calculation of the value uplift and the resultant anticipated value share contribution.
13. 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.
14. 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.
15. Planning agreements may be used by Council as a means of funding any public facilities that complement Council's contributions plan/s or State infrastructure schedule.
16. While a planning agreement does not need to establish a direct connection, it is preferred that part/s of the public benefits proposed in a planning agreement are not wholly unrelated to the development proposal.
17. Council will require a planning agreement to make provision for payment by the developer of the Council's costs of negotiation, preparation, legal advice, independent advice, exhibition and execution of the planning agreement, as well as registering, monitoring, enforcing and administering the planning agreement.
18. Council will always require that a planning agreement be registered on title and will generally require a caveat or security to ensure that the land cannot be transferred until the planning agreement is registered.
19. Planning agreements may provide for development contributions towards the recurrent costs of public facilities.

20. Where the development potential (FSR) is to be calculated including land to be dedicated as part of the 'site area', such land is to be dedicated at nil cost to Council and will not be offset against s.94 or s.94A development contributions.
21. Planning agreements must be consistent with terms of a letter of offer made by the developer in connection with the development proposal.
22. Council will ensure that planning agreements are open and transparent and take all reasonable steps to ensure that conflicts of interest are ameliorated.
23. The consideration of a planning agreement is at the absolute discretion of Council.

PROBITY STATEMENT

As outlined in Council's *Statement of Business Ethics*, public probity is important to Council. Council will ensure that the consideration of any planning agreement is fair, transparent and is directed at achieving net public benefits in an appropriate manner, free of corruption or perception of bias. Council will ensure that planning agreements are used to provide good value to the community and the environment.

RELATED LEGISLATION

This Policy is consistent with the following:

- *Environmental Planning and Assessment Act 1979* (Subdivision 2 of Division 6 of Part 4)
- *Environmental Planning and Assessment Regulation 2000* (Division 1A of Part 4).

This Policy is also guided by the following:

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

RELATED DOCUMENTS AND COUNCIL POLICY

This Policy should be read in conjunction with:

- ***Cumberland Planning Agreements Guidelines***

AUTHORISATION & VERSION CONTROL

Policy Owner	<i>Group Manager, Planning</i>
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