



THE HILLS PLANNING AGREEMENT POLICY

Policy 27/2024-2028

DATE

Ordinary Meeting of Council 27 May 2025

POLICY NO:	27/2024-2028
LEGISLATIVE REQUIREMENTS	<i>Environmental Planning and Assessment Act 1979 (NSW) and Environmental Planning and Assessment Regulation 2021 (NSW).</i>
RESPONSIBILITY:	Forward Planning
OBJECTIVE:	To provide guidance and establish criteria by which Developers may make an application to enter into a Planning Agreement with Council to commit to providing funding or other means towards the provision of new infrastructure, or improvements to existing infrastructure to benefit the Community.
REVIEW:	Within the first 12 months of each term of Council or as required.

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ATTACHMENT 1: PLANNING AGREEMENT TEMPLATE

1. LEGISLATIVE FRAMEWORK

1.1. Name of This Policy

This Policy is known as The Hills Shire Council Planning Agreements Policy (“Policy”).

1.2. Application of this Policy and Commencement

This Policy applies to planning agreements, including the making and assessment of an offer to enter into a planning agreement. This Policy was endorsed by resolution of the Council on 27 May 2025.

1.3. What is a Planning Agreement

A planning agreement is a voluntary and legally binding agreement, entered into between a planning authority e.g. Council (or two (2) or more planning authorities) and a Developer, under which the Developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards one (1) or more public purposes. Planning agreements may also be referred to as ‘voluntary planning agreements’ or ‘VPAs’.

1.4. Objectives of Planning Agreements

The objectives of planning agreements will be dictated by the circumstances of each case as well as relevant Council policies. However, as a general indication, planning agreements may be directed towards achieving the following broad objectives:

- Meeting the demands created by the development for new or augmented public infrastructure, amenities and services.
- Securing benefits for the community so that development delivers a net community benefit.
- Compensating for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.

1.5. Legislative Context

The current legal and procedural framework for planning agreements is governed by:

- (a) Subdivision 2 of Division 7 of Part 7 of the EP&A Act;
- (b) Division 1 of Part 9 of the EP&A Regulation;
- (c) The *Local Government Act 1993* (NSW).
- (d) Any applicable Local Environmental Plan or State Environmental Planning Policy;
- (e) Any applicable Contributions Plan or draft Contributions Plan; and
- (f) this policy,

(each as amended from time to time).

In addition to the above, the Department of Planning, Housing and Infrastructure (DPHI) has issued a Planning Agreements Practice Note – February 2021 (the Practice Note) prepared pursuant to Section 203(6) of the EP&A Regulation. Under Section 203(7) of the EP&A Regulation, Council is required to consider any relevant practice notes as part of negotiating and entering into planning agreements. Accordingly, Council has relied upon the contents of the February 2021 Practice Note to inform this Policy and this policy has been prepared in accordance with, and is not inconsistent with, the Practice Note. If there is any inconsistency

between that Practice Note and this policy, then this policy applies to the extent of that inconsistency.

Council will also be guided by all planning circulars issued by DPHI from time to time, including DPHI Planning Circular PS 21-002 '*Reporting and accounting requirements for infrastructure contributions*' issued on 12 February 2021.

Many new developments create the need for additional public amenities and public services. Division 7.1 of Part 7 of the EP&A Act empowers Council to require the proponent of new development to contribute towards the provision of these public services and amenities and planning agreements are one mechanism to achieve this outcome.

Entry into a planning agreement will not exclude the application of Section 7.11, 7.12 or 7.24 of the EP&A Act in respect of development unless so excluded in accordance with the EP&A Act and stipulated in the planning agreement.

Council will not agree to a planning agreement excluding the operation of s7.24 of the EP&A Act unless the Minister or the appropriate development corporation approves that exclusion.

1.6. Who Can Enter into a Planning Agreement

Section 7.4 of the EP&A Act sets out the circumstances under which a planning agreement may be entered into by Council. It provides that a planning agreement may be made between a planning authority (or two (2) or more planning authorities) and a person (Developer):

- a) who has sought a change to an environmental planning instrument, or
- b) who has made, or proposes to make, a development application or application for a complying development certificate, or
- c) who has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies, under which the Developer is required to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

1.7. Local Strategic Planning Statement

In considering whether to accept an offer to enter into a planning agreement, Council will have regard to its then current Local Strategic Planning Statement (LSPS), and in particular whether the proposed planning agreement is consistent with objectives of the LSPS.

2. PURPOSE OF THIS POLICY

2.1. Objectives of this Policy

The purpose of this policy is to provide a fair, transparent and standard procedure and framework for the making and assessment of an offer to enter into a planning agreement.

This document provides an overview of the legal requirements of planning agreements under the applicable legislation and guidelines for negotiating planning agreements as well as the approval process for planning agreements internally within Council.

In particular:

- (a) the circumstances in which the Council would consider entering into a planning agreement;
- (b) the matters ordinarily covered by a planning agreement;
- (c) the form of development contributions ordinarily sought under a planning agreement;
- (d) the kinds of public benefits ordinarily acceptable to Council and whether they involve a planning benefit; and
- (e) the procedures for negotiating and entering into planning agreements.

2.2. Specific Purposes of this Policy

The specific purposes of this Policy are to:

- a) Establish a fair, transparent, and accountable framework governing the preparation and use of planning agreements by Council.
- b) Expand the range and extent of development contributions that may be made by development towards public facilities and other public benefits in Council's local government area.
- c) Set out Council's specific policies and procedures relating to the use of planning agreements within Council's local government area.
- d) To provide a framework that gives stakeholders in development and members of the community greater involvement in determining the type, standard and location of public facilities and other public benefits.
- e) Outline procedures for public notification to allow the community to gain an understanding of the benefits of proposed planning agreements.
- f) Specify the information to be submitted to Council for the purpose of considering an offer to enter into a planning agreement.
- g) Adopt innovative and flexible approaches to the provision of infrastructure and other public benefits through the use of planning agreements in a manner that is consistent with Council's Community Strategic Plan and LSPS.
- h) Allow Council to consider planning agreements which achieve planning benefits to the wider community.

2.3. Policy not Binding

This policy is not legally binding and Council is not bound to strictly apply this policy for every planning agreement entered into by Council. However, Council will generally seek to apply this policy, as far as reasonably practicable, in relation to planning agreements (including their negotiation).

3. TERMS AND DEFINITIONS

Community infrastructure	means public amenities and public services.
Contributions Plan	means a public document prepared by a Council under to Section 7.11 and/or Section 7.12 of the EP&A Act.
Council	means The Hills Shire Council.
Developer	a person/entity who has made a planning application to Council and is seeking to enter into a planning agreement for the purpose of this Policy.
Development Application	has the same meaning as the EP&A Act.
Development Consent	has the same meaning as the EP&A Act.

Development contribution	means the payment of a monetary contribution, the dedication of land, the provision of a material public benefit (aka the carrying out of Works-in-Kind) or any combination of these.
DPHI	Department of Planning, Housing and Infrastructure.
EP&A Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
EP&A Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Explanatory note	means a written statement associated with a draft planning agreement in accordance with Section 205 of the EP&A Regulation.
Instrument change	means a change to an environmental planning instrument.
LEP	Local Environmental Plan.
Material Public Benefit	has the same meaning as Works-in-Kind.
Planning Benefit	A development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.
Practice Note	means the Practice Note on Planning Agreements published by the Department of Planning and Environment in February 2021.
Provision of public infrastructure	includes: <ul style="list-style-type: none"> • the provision, extension and augmentation of (or the recoupment of the cost of providing, extending or augmenting) public infrastructure, and • the funding of recurrent expenditure relating to the provision, extension and augmentation of public infrastructure, and • the conservation or enhancement of the natural environment, and • any action of a planning authority in connection with the exercise of any statutory function under this Act, including the carrying out of any research or investigation and the preparation of any report, study or instrument.
Public benefit	is the benefit enjoyed by the public as a consequence of a development contribution.
Public purpose	means any one (1) or more of the following (without limitation): <ul style="list-style-type: none"> • the provision of (or the recoupment of the cost of providing) public amenities, public services, affordable housing, and transport or other infrastructure relating to land. • the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure. • the monitoring of the planning impacts of development; • the conservation or enhancement of the natural environment. • any other public purposes set out in section 7.4(2) of the EP&A Act, as amended from time to time.
Regional infrastructure contributions (Special Infrastructure)	means any contribution so directed by the Minister under Section 7.24 of the EP&A Act.

**Contributions and/or
Housing and Productivity
Contributions)**

SEPP

State Environmental Planning Policy.

Works-in-Kind

means the whole or part undertaking of a work or provision of a facility, public amenity or service and/or embellishment of land that is specifically included within a works schedule in a contributions plan, in lieu of the part or full payment of either a monetary contribution or the dedication of land that is required as a condition of development consent.

Note: Unless otherwise specified, this Policy adopts the terms and definitions as used in the EP&A Act and EP&A Regulation and the Planning Agreements Practice Note, February 2021.

4. OVERVIEW OF PLANNING AGREEMENTS

4.1. Circumstances for Preparing a Planning Agreement

Planning Agreements may be entered into with respect to rezoning of land, development applications, other developments with respect to which Council is not the approval authority within The Hills Local Government area, or in any other circumstances permitted under the EP&A Act.

The acceptance of an offer to enter into a planning agreement is at the absolute discretion of Council. Council is under no obligation to enter into negotiations with any person with respect to a planning agreement or enter into a planning agreement offered by a proponent or applicant. Planning agreements are voluntary, but once entered, they become legally binding contracts that apply to the development and the land to which they relate.

A planning agreement is normally, but not exclusively, entered into in one (1) of the following circumstances:

- 1) In relation to a change to a planning instrument (a SEPP or LEP).
- 2) In relation to a development application, where the Developer agrees to provide development contributions in lieu of, or in addition to, contributions under Section 7.11, 7.12 and 7.24 of the EP&A Act.
- 3) In relation to a development where there is a shortfall in the provision of a particular item, such as car parking, or open space.

4.2. Timing of Development Contributions

A planning agreement must contain a time, or times, by which each development contribution required to be provided under the planning agreement. The timing of the provision of each development contribution must be acceptable to Council, which must require that each development contribution is provided by a time which ensures that the public need for the relevant item is met.

4.3. Pooling of Funds

Where a planning agreement provides for a monetary contribution by the Developer, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements and applied progressively for the

different purposes under those agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

4.4. Relationship of a Planning Agreement to Contribution Plans

A planning agreement differs from development contributions under Section 7.11 or Section 7.12 of the EP&A Act in that a planning agreement may require the Developer to construct items itself, at its cost, rather than pay a monetary sum to Council, with Council undertaking the construction of the relevant item. Under a Section 7.11 contributions plan, Council can only require a Developer to pay a monetary contribution, or dedicate land free of charge, or both.

A planning agreement may be entered into where there is already a contributions plan in place, or it may be entered into where there is no current contributions plan.

A planning agreement may or may not exclude, in whole or in part, the application of either or both of Section 7.11 and Section 7.12 of the EP&A Act with respect to the development to which the planning agreement relates, depending on the nature and extent of the development contributions being provided under the planning agreement. This is a matter to be negotiated between Council and a Developer having regard to the circumstances of the case.

In considering whether or not a planning agreement will exclude the application of Section 7.11 or Section 7.12, Council will have regard to the anticipated development and income under the applicable contributions plan and the potential for any exclusion to result in a funding shortfall under that plan. Where a planning agreement is associated with a planning proposal or development application that seeks to enable development uplift beyond that envisaged under the current controls, and the contributions through the planning agreement relate only to that uplift, development contributions under the applicable Section 7.11 or Section 7.12 contributions plan will generally still be required with respect to any yield already anticipated under the current controls.

Where the application of Section 7.11 and Section 7.12 of the EP&A Act are not excluded by a planning agreement, the Council will generally not agree to a provision allowing benefits under the planning agreement to be taken into consideration in determining a development contribution under Section 7.11 or Section 7.12. In this case, any Section 7.11 or Section 7.12 contribution will be levied from future development in full compliance with the Council's relevant Section 7.11 or Section 7.12 plan and the EP&A Act.

5. PRINCIPLES GOVERNING THE USE OF PLANNING AGREEMENTS

Council's use of planning agreements will be governed by the following principles, which have been determined having regard to the Practice Note:

- 1) All planning decisions will be made based on planning grounds alone, irrespective of any material public benefits offered through planning agreements. Development that is unacceptable on planning grounds (including, without limitation, environmental grounds) will not be permitted because of planning benefits offered by developers through planning agreements.
- 2) When considering a development application or instrument change, Council will not give undue weight to a planning agreement.
- 3) A planning agreement cannot impose an obligation to grant development consent or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.

- 4) Any exceptions to relevant development standards cannot be addressed by a planning agreement and instead must only be assessed in accordance with the relevant Environmental Planning Instruments.
- 5) Council will not enter a planning agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the objects set out in s1.3 of the EP&A Act and the general heads of consideration set out in s4.15 of the EP&A Act.
- 6) Planning agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand.
- 7) A consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into such an agreement.
- 8) Planning agreements must only be used for a planning purpose and are not a means of revenue raising or overcoming spending limitations wholly unrelated to particular development.
- 9) Value capture should not be the primary purpose of a planning agreement.
- 10) Planning decisions will not be bought or sold through planning agreements.
- 11) Council will not allow planning agreements to improperly fetter the exercise of its functions under the EP&A Act, the EP&A Regulation or any other Act or Regulation.
- 12) Planning agreements must not include public benefits wholly unrelated to the particular development.
- 13) Council will take into consideration whether the public purposes provided by the planning agreement are related to, and not inconsistent with, the Council's public works program as developed from time to time.
- 14) Council will consider whether a planning agreement provides benefits to the wider community and will consider the planning agreement against the public interest.
- 15) Council will not allow the interests of individuals, lobbyists, or interest groups to outweigh the public interest when considering a proposed planning agreement.
- 16) Council will not improperly rely on its position in order to extract unreasonable public benefits from Developers under planning agreements.
- 17) A planning agreement may propose measures that can address planning issues that have been identified with respect to the relevant development application.

6. PROCESS FOR ENTERING INTO A PLANNING AGREEMENT

6.1. Acceptability Test

Council will only agree to accept an offer to enter into a planning agreement after considering whether the planning agreement meets the acceptability test referred to below. The acceptability criteria below are reflective of the Practice Note.

For a planning agreement to be acceptable to Council it must:

- 1) Be submitted in writing with a formal letter of offer to enter into a planning agreement which is signed by all landowners and/or proposed parties to the agreement and identifies the development application or planning instrument change to which the offer relates.

- 2) Be directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development.
- 3) Provide for public benefits that bear a relationship to the development, that are not wholly unrelated to the development and are located in the locality in which the development is situated.
- 4) Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.
- 5) Provide for a reasonable means of achieving the desired outcomes and securing the benefits.
- 6) Protect the public against unreasonable, adverse environmental or amenity impacts.
- 7) Provide clear details of the nature and extent of the development contributions offered by the developer under the agreement and clearly specify when and how the contributions will be made in the formal offer.
- 8) Be suitable in the context of Council's broader strategic infrastructure planning framework, including all draft or in force Section 7.11 or Section 7.12 Contributions Plans, precinct planning works, other planning agreements and this Policy.
- 9) Not result in a shortfall or deficit under the contributions plan applicable to the development by way of granting exemption from the applicable Section 7.11 or Section 7.12 contributions.

6.2. Matters that Council will Consider

The criteria that Council may take into account when considering whether or not to negotiate a planning agreement with a Developer includes but is not limited to the following:

- 1) Whether planning benefits for the wider community accrue from the planning agreement.
- 2) Whether the public benefits proposed to be provided under the planning agreement meet:
 - a. the demands created by the development for new public infrastructure, amenities, services; and
 - b. the planning objectives of Council.
- 3) Whether the development meets the objectives of Council's LSPS.
- 4) Whether an existing deficiency in the provision of public facilities in the Council's Local Government Area (LGA) is rectified through the planning agreement.
- 5) Whether compensation is required for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration.
- 6) The financial impost on Council arising as a result of the provision of the public benefits under the planning agreement, including but not limited to:
 - a. the financial burden on Council with respect to the management and maintenance of any land and facilities provided (including whether any initial or ongoing costs are designated as Council's responsibility); and
 - b. whether recurrent funding of those facilities is required or provided.
- 7) The extent to which Council needs to monitor the planning impacts of development.

- 8) Whether there are any other relevant circumstances that may operate to preclude Council from entering into the proposed planning agreement.

6.3. When Will Planning Agreements be Considered by Council

The Council will consider entering into a planning agreement with a Developer when:

- 1) A Developer voluntarily desires to be a party to such an agreement.
- 2) Alternative means of securing public benefits from the development process (such as Section 7.11 or Section 7.12 contributions) are unwieldy, inappropriate or inferior.
- 3) There is a clear public interest in pursuing a planning agreement.
- 4) The planning agreement would meet the acceptability test as outlined in this Policy.

6.4. Instances where the use of a Planning Agreement may be Relevant to the Development of Land within The Hills Shire LGA

A planning agreement may be relevant to the development of land within The Hills LGA under the following circumstances:

- 1) Where a proposed development is unanticipated by Council or in advance of the completion of detailed planning investigations and as a result, works and facilities to cater for the development have not been identified. Planning agreements can be utilised as a means of providing community infrastructure required to meet the demands generated by new development. In particular, this could occur in association with a planning proposal to amend Council's planning controls to provide development uplift or in association with a development application which seeks to exceed or vary the applicable planning controls, resulting in additional yields.
- 2) Where it is in both Council's and the developer's interest to 'package' a range of development contributions related to a proposed development. This may include contributions otherwise required by a condition of consent under Section 4.17(1)(f) or (h) of the EP&A Act, or other contributions or arrangements described below.
- 3) Where a single landowner or consortium of landowners seeks to undertake holistic and major development of a site or precinct including the provision of all community infrastructure required to support the development.
- 4) Where the owner or owners have an incentive to be directly involved in the delivery of community infrastructure (such as where quicker timeframes for delivery of infrastructure are required for the developer to bring product to the market).
- 5) Where a developer proposes to provide planning benefits to the community. Planning benefits may take the form of community infrastructure additional to, or at a higher standard than, what has been specified under the applicable development control plan, contributions plan and / or engineering specifications. Planning benefits may also take the form of land and works that provide a public benefit enjoyed by the wider community and not just the users or occupants of the development.
- 6) Where Council and a developer can, by negotiation, achieve different and better or more innovative outcomes than can be achieved through imposing direct or indirect contributions.
- 7) Where the existing contributions framework is insufficient to allow for the managing of credits, offsets, works-in-kind, material public benefits, valuation of non-monetary benefits etc. as part of a staged development or in relation to the provision of critical

community infrastructure that can be funded by one major developer but will benefit a number of other developers.

- 8) As a means of securing recurrent funding for community infrastructure, whether the infrastructure is located within or outside the site the subject of the instrument change or development application. Where the infrastructure primarily serves the development to which the planning agreement relates the arrangement for recurrent funding may be in perpetuity.
- 9) Where public benefits can be secured through negotiation of a planning agreement in association with another Council or authority.

7. NEGOTIATING A PLANNING AGREEMENT

7.1. Offer to Enter into a Planning Agreement

Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable. In this regard, the process set out in this Policy is based on principles of fairness, co-operation, full disclosure, early warning and agreed working practices and timetables.

Generally, a planning agreement should be offered, negotiated and documented before lodgement of a Development Application or Planning Proposal.

An offer to enter into a planning agreement should:

- 1) Be in writing.
- 2) Be addressed to the General Manager.
- 3) Be signed by or on behalf of all proposed parties to the proposed planning agreement (other than Council).
- 4) Outline in sufficient detail the matters required to be included in a planning agreement as specified in s7.4 (3) of the EP&A Act to allow proper consideration of the offer by the planning authority. Such matters include, but are not necessarily limited to:
 - a. description of the land and the development to which the proposed planning agreement relates;
 - b. description of the development application or change to the environmental planning instrument to which the proposed planning agreement relates;
 - c. description of the nature, extent and timing of contributions proposed to be made by the Developer under the planning agreement;
 - d. assessment of the value of the contributions proposed under the planning agreement;
 - e. whether the planning agreement proposes to exclude (wholly or in part) or does not exclude the application of Section 7.11 or Section 7.12 contributions;
 - f. if the planning agreement does not exclude the application of section 7.11 to the development, whether benefits under the planning agreement are or are not to be taken into consideration in determining a development contribution under section 7.11.
 - g. details of intended dispute resolution procedures; and

- h. details of the enforcement measures to enable Council to enforce the planning agreement by suitable means, in the event of a breach and how these are intended to operate e.g. securities or bank guarantees.
- 5) Outline in sufficient detail all other key terms and conditions proposed to be contained in the planning agreement.
- 6) Identify if the planning agreement will require an amendment to an existing adopted contributions plan.

7.2. Timing of Offers in Association with Planning Proposals

Under the Local Environmental Plan (LEP) Making Guideline (2022) and Council's Planning Proposal Policy, Council is subject to benchmark timeframes for the assessment of planning proposals, which means there are limited opportunities to negotiate on planning agreements following formal lodgement of the associated planning proposal. The scoping phase for a planning proposal (i.e. 'Pre-lodgement') provides an opportunity for Proponents to present a planning agreement offer to Council officers and receive feedback prior to formal lodgement. It is expected that all discussions, negotiations and offers with respect to planning agreements, as well as the preparation of a proposed planning agreement, would occur as part of the scoping phase. If a Proponent seeks to enter into a planning agreement with Council as part of a planning proposal, it is expected that the proposed planning agreement, prepared in accordance with this Policy and Council's Planning Agreement template, will be lodged when the planning proposal is formally lodged.

7.3. Steps In the Negotiation Process

The negotiation of a Planning Agreement will generally involve the following key steps:

- 1) Council and the Developer (and any other relevant party) will decide whether to negotiate a planning agreement. In some cases, there may be a land use strategy for a locality, which will inform the preparation of the planning agreement. In making this decision consideration should be given to the Practice Note, relevant Legislation and any relevant policies. The parties should consider whether other planning authorities and / or other persons associated with the development should be additional parties to the planning agreement, such as the Landowner if the Landowner is a different person to the Developer.
- 2) Initial discussions between Council and the Developer would culminate in the submission of a formal offer to enter into a planning agreement by the developer (see Section 7.1).
- 3) Council may seek legal advice on any planning agreement at the commencement of negotiations, even if Council undertakes initial negotiations itself, without its solicitor present.
- 4) Planning agreement offers in association with planning proposals will be considered concurrently with the pre-lodgement assessment (scoping phase) of the planning proposal. Planning agreement offers in association with development applications will be considered concurrently with the assessment of the development application.
- 5) Council officers do not need to report the matter to the elected Council prior to commencing negotiation of a planning agreement.
- 6) Both parties should ensure they appoint a person to represent them in the negotiation of the planning agreement. Council will appoint a Council officer or officers with appropriate delegated authority to negotiate a planning agreement on behalf of the

Council. Council may involve an independent person(s) or expert to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome. Councillors will not be involved in the face to face negotiation of a planning agreement but will ultimately be responsible for the approval or rejection of the agreement as part of their duties as Councillors.

- 7) The offer will be assessed by Council officers against the relevant provisions of this Policy, including but not limited to the acceptability test in Section 6.1.
- 8) There will be internal consultation between all of the relevant officers within Council who may have an interest in the planning agreement or anything arising from it. At this stage, Council officers will identify any key, outstanding or unresolved issues for negotiation with the developer. In particular, Council should seek to reach agreement with the Developer as to:
 - (a) the nature and extent of the development contributions to be provided by the Developer under the planning agreement;
 - (b) the estimated value of those development contributions;
 - (c) the time by which each of the development contributions should be provided;
 - (d) whether the planning agreement will exclude, in whole or in part, the application of s7.11 and/or s7.12 of the EPA Act to the Development; and
 - (e) the nature and extent of the development to which the planning agreement will apply.
- 9) The Developer will be advised in writing of any key issues for negotiation and provided with the opportunity to address any outstanding or unresolved issues, by way of submission of an amended formal offer. Council officers will be responsible for negotiating (or coordinating the negotiation of) a planning agreement on a 'without prejudice' basis but do not have delegation to agree to, endorse or enter into a Planning Agreement.
- 10) The parties should undertake further negotiation on the specific terms of the proposed planning agreement as necessary.
- 11) Following negotiations, the Developer should submit to Council a formal, irrevocable and unconditional offer to enter into the planning agreement signed by all external parties. The Developer should also prepare and submit a proposed planning agreement in accordance with this Policy and the Planning Agreement Template (including the Explanatory Note), as adopted by Council from time to time. As noted previously, in the case of planning proposals, the proposed planning agreement must be lodged with the planning proposal application in order to be considered with the planning proposal.
- 12) Council will seek legal advice (or advice from another relevant third party) on a planning agreement at any time during the negotiation process and prior to public exhibition, where considered necessary. Such circumstances may include complex negotiations or large projects, where factual information requires validation or where there is considered to be a higher risk to Council than with other planning agreements. In such circumstances, Council may request confirmation from an Applicant or Proponent that it will cover Council's reasonable costs for obtaining this preliminary advice.
- 13) Council will require a planning agreement to make provision for payment by the Developer of the Council's reasonable costs of and incidental to assessing, negotiating, preparing and entering into the agreement. A planning agreement may also need to make provision for payment by the Developer of Council's reasonable costs for the monitoring and enforcing of the planning agreement. This may include an obligation on the Developer to provide security to Council for those costs.

- 14) Subject to any direction of the Minister and decision of any Local Planning Panel constituted under the EP&A Act, Council may then proceed to adopt any of the processes available to it with respect to deciding to proceed, or not to proceed, with the proposed planning agreement. Ideally, that process will include the submission of a report to the elected Council with a recommendation to either:
 - a. proceed with the exhibition of the proposed planning agreement subject to a legal review (and incorporating any changes recommended by the legal review); or
 - b. to proceed no further with the proposed planning agreement.
- 15) Councillors will not participate in negotiations with a Developer or their representatives and the Councillors' role through the Council Meeting process will be limited to voting on the following:
 - a. Accepting, in principle, a planning agreement offer;
 - b. Endorsing a draft planning agreement for legal review and public exhibition;
 - c. Determining whether or not to enter into a draft planning agreement; and
 - d. Approving the execution of a planning agreement.
- 16) Should Council accept, in principle, the planning agreement offer, the planning agreement would then be subject to a detailed legal review on behalf of Council (at the cost of the developer), prior to being placed on public exhibition. The completion of legal review prior to public exhibition will ensure that the version of a planning agreement which is placed on public exhibition is both legally enforceable and 'executable', providing greater transparency for the community and avoiding the need to re-exhibit a planning agreement as a result of any legal/drafting amendments which may arise from the legal review. Where the legal review results in drafting amendments to the planning agreement which are not 'material' (do not change the terms or value of the offer or the planning/public benefits associated with the offer), these will be incorporated into the draft planning agreement prior to public exhibition.
- 17) Once legal advice has been obtained, the proposed planning agreement will be publicly exhibited (assuming a resolution of Council to this effect) in accordance with legislative requirements and this Policy.
- 18) Council may negotiate further changes to the planning agreement having regard to any matters raised following public notification and exhibition. If any substantial or material changes are made to the proposed planning agreement after it has been publicly exhibited, then the process in Section 7.3 would need to be followed again with respect to that amended planning agreement.
- 19) Once the exhibition of the proposed planning agreement has been undertaken the proposed planning agreement would be reported to the elected Council in order to:
 - a. consider any public submissions made with respect to the proposed planning agreement;
 - b. resolve whether or not to accept the offer made by the Developer and enter into the planning agreement.
- 20) Written consent to register the planning agreement on title should be obtained from all interested parties (as required by NSW Land Registry Services), prior to the planning agreement being reported to Council following exhibition. This will avoid delays at the

execution stage, particularly where there is a large number of interested parties (e.g. strata subdivided properties).

- 21) Following a resolution of Council to enter into the planning agreement, an invoice for the payment of Council's legal costs will be forwarded to the Developer prior to Council executing the planning agreement.
- 22) The planning agreement is entered into when it is signed by all the parties. The planning agreement comes into effect at the time stated in the agreement.
- 23) Where the application to which a planning agreement relates is a development application, and if Council approves the application, Council will impose a condition of consent requiring the planning agreement to be entered into between the parties or, if an agreement has been executed, set out in the consent the terms of the agreement.
- 24) Where the application to which a planning agreement relates is a planning proposal seeking to amend a planning instrument, the instrument of change will not be finalised until the planning agreement has been entered into by both parties and registered on the title of the land.
- 25) Any modifications to a planning agreement, whether sought by the Council or other parties to the agreement, will need to be considered by way of the process outlined in this Section 7.3.

7.4. Form of Contributions

The standardisation of development contributions sought under planning agreements (similar to the operation of a typical contributions plan) will not always be possible and as such, the negotiation of each planning agreement will have regard to the type and scale of the proposed development, the scale of demand for new infrastructure arising from the proposal, the location of the proposed development, the capacity of existing infrastructure within the locality surrounding each development and the impact of the contributions on development feasibility.

Notwithstanding this, to assist Developers and the community in understanding Council's general priorities for planning obligation negotiations, a list of potential benefits that Council will consider is provided as Schedule 1 of this Policy. This list has been prepared having regard to the relevant State and regional planning policies as well as Council's strategic land use planning policies and objectives, strategic infrastructure planning and development contributions framework.

It is acknowledged that planning benefits proposed under a planning agreement may differ from the examples in Schedule 1 and other benefits which are not specifically identified may also be relevant when negotiated on a case-by-case basis, especially where planning benefits are also offered.

Council will consider the provision of contributions in the form of the dedication of land (free of cost), the provision of material public benefit or the payment of monetary contributions. However, where a particular development is unable to deliver an item of infrastructure in its entirety, the payment of monetary contributions is preferable as it allows for greater flexibility in timing and allocation of the expenditure, as well as the pooling of monetary contributions collected from a range of planning agreements.

A planning agreement may include a provision relating to the payment of a monetary contribution towards recurrent costs associated with a public purpose.

Where particular development outcomes (including but not limited to through-site links, local roads (construction, utility relocation, and dedication at no cost), public domain improvements

or local infrastructure) would normally be required by way of a condition of development consent in accordance with any applicable DCP or Contributions Plan, these will not be considered to be 'public benefits' (or valued as such) under a planning agreement. Such works will not be accepted as ground for reducing a contribution under a planning agreement or reducing the contributions otherwise payable under the applicable Section 7.11 or Section 7.12 contributions plan.

7.5. Key Considerations for Development Contributions

Council is required to have regard to the following key considerations before deciding whether to accept a Developer's offer of a Planning Agreement:

- 1) Can the public infrastructure that is proposed to be funded by a development contribution be provided within a reasonable time?
- 2) What will be the impact of the proposed development contribution on the affordability of the proposed development?
- 3) Is the proposed development contribution based on a reasonable apportionment between existing demand and new demand for public infrastructure to be created by the proposed development to which the contribution relates?
- 4) Is the proposed development contribution based on a reasonable estimate of the cost of proposed public infrastructure?
- 5) Are the estimates of demand for each item of public infrastructure to which the proposed development contribution relates reasonable?
- 6) Guidance provided within Schedule 2 of this Policy.

8. PROCEDURE

8.1. Probity

Public probity is important to Council, and it will ensure that the negotiation and the outcome of any planning agreement is fair, transparent and is directed at achieving public benefits in an appropriate manner free of actual or perceived corrupt conduct or maladministration.

In this regard, Council will:

- 1) Inform any applicant about Council's values and business ethics, specifically, about ethical behaviour appropriate to business dealings in accordance with Council's Code of Conduct.
- 2) Ensure that the local community is informed about the system and the Council's role, specifically, how the planning agreement system operates and how Council will deal with developments objectively.
- 3) Publicly exhibit planning agreements to ensure they are open and transparent, specifically achieving maximum public awareness of the matters contained in a planning agreement and the potential public benefit of an agreement.
- 4) Ensure appropriate delegations and separation of responsibilities in considering planning proposals and development applications that involve a planning agreement, specifically the need to ensure processes adequately address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk.

- 5) Ensure that modifications to approved development should be subject to the same scrutiny as the original development application.
- 6) Ensure that Councillors and members of Council staff understand their varied roles, to avoid any perceived or actual conflict of interest.
- 7) Take every step to ensure that conflicts of interest are ameliorated to the greatest extent possible, specifically, independent assessment by third parties where Council has an interest and not entering into any contractual arrangement which purports to guarantee outcomes that are contrary to separate regulatory processes and the public interest.

Council will ensure that negotiation and formation of any planning agreement will be undertaken in accordance with any then current probity policy that may apply.

In certain circumstances, Council may decide to implement a probity policy specific to the negotiation of a particular planning agreement.

8.2. Public Notification

A planning agreement cannot be entered into, amended or revoked unless there has been public notification (exhibition) of the proposed planning agreement for a period of at least twenty-eight (28) days, or as otherwise required under the EP&A Act or the EP&A Regulation.

The public notification of a planning agreement will be carried out as follows:

- 1) Where Council supports exhibition of the draft planning agreement, it will publicly exhibit the development application and/or proposed instrument and the planning agreement in accordance with the EP&A Act and its notification requirements and invite public submissions.
- 2) The terms of the planning agreement and its proposed public benefits are to be clearly shown as part of consultation material. Planning agreements must be accompanied by an explanatory note to assist the public in understanding the agreement. This will help the community make a fully informed decision on the overall proposal.
- 3) Council encourages the public to make submissions on planning agreement. This will allow for the Council to better understand local needs and permit fine tuning of the planning obligations set out in any planning agreement.
- 4) Public submissions to planning agreement notifications will be assessed by the Council in accordance with its notification policy.
- 5) Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the planning agreement or the application, or their formal consideration by Council, or for any other reason.
- 6) Any material changes that are proposed to be made to a planning agreement after a public notice has been given should be subject to renotification if the changes would materially affect:
 - How any of the matters specified in Section 7.4 of the EP&A 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.
- Whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

8.3. Explanatory Note

An Explanatory Note will be notified in conjunction with the exhibition of a draft Planning Agreement. An Explanatory Note must contain the following:

- 1) A summary of the objectives, nature and effect of the proposed Planning Agreement, amendment or revocation.
- 2) Identify the merits of the proposed planning agreement including how the planning agreement, amendment or revocation promotes the public interest, impact on the public and one or more of the objects of the EP&A Act.
- 3) Identify how the planning agreement, amendment or revocation promotes one or more of the Guiding Principles for Councils under Section 8 of the Local Government Act 1993 (NSW).
- 4) Identify a planning purpose or purposes served by the Planning Agreement, amendment or revocation, and contain an assessment of whether it provides for a reasonable means of achieving that purpose.
- 5) Identify whether the planning agreement, amendment or revocation conforms to Council's capital works program.
- 6) State whether the Planning Agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.
- 7) Should indicate timing of delivery.
- 8) Should include maps, diagrams, and other material to help explain what is proposed.
- 9) Be easy to understand and written in plain English.

The Developer must prepare the explanatory note. However, it will be reviewed and agreed on by Council and any other parties to the agreement. The final form of the Explanatory Note is a matter for the Council.

8.4. Preparation of the Planning Agreement

Unless otherwise specified in this Policy, the Planning Agreement Template is to be used as a basis for any planning agreement to be entered into between Council and a Developer where possible, but it is not compulsory for all the provisions in that template to be used and it will be adapted to each development as appropriate. In that regard, however, Council wishes to ensure consistency of administration of its planning agreements and as such may not agree to amend clauses within its template planning agreement with respect to matters which require ongoing Council administration. Any changes to the standard wording within Council's template will need to be accompanied by detailed justification.

Council will generally not agree to amend clauses of the following nature in the template planning agreement when negotiating Planning Agreements with a Developer (as applicable to each development):

- (a) Defects Liability.
- (b) Developer's Warranties and Indemnities.
- (c) Registration.
- (d) Assignment.
- (e) Dispute Resolution.
- (f) Breach.
- (g) Termination.
- (h) Legal costs.

8.5. Provision of Security Under a Planning Agreement

- 1) Council will require a planning agreement to make provision for adequate security to cover the Developer's obligations under the agreement. Security enables Council, for example, to draw on funding to complete works which are unable to be completed by a Developer.
- 2) In a general sense, adequate security, is security which is sufficient to allow Council to either:
 - a. Ensure the need for the relevant material public benefit is not generated until that material public benefit is provided (i.e. by withholding the issue of a subdivision certificate); or
 - b. Immediately take steps to ensure that the relevant material public benefit is available to meet the need generated by the Development (i.e. by way of a bank guarantee that can be immediately called upon by Council).
- 3) The form of security may include, but is not limited to one (1) or more of the following:
 - a. Provision of an unconditional bond or bank guarantee from an Australian bank in favour of Council to the full value of the contributions to be provided under the planning agreement (including in respect of any works and defects for works) on terms otherwise acceptable to Council.
 - b. The ability for Council to withhold issuing a Construction Certificate, Occupation Certificate and/or Subdivision Certificate until the Developer has fulfilled some or all of its obligations under the planning agreement.
 - c. The ability for Council to step-in and complete works where the Developer fails to complete them within a specified time.
 - d. Where the development contributions include the dedication of land to Council, a right for Council to:
 - compulsorily acquire the relevant land in the event the Developer fails to dedicate it to Council by the time required under the planning agreement; and/or
 - register a caveat on the title of the relevant land until such time as it is dedicated to Council.

- 4) Council will only accept a personal guarantee, or a parent company/corporate guarantee as security for the obligations of the Developer under a planning agreement in addition to other forms of security specified above.
- 5) Council will not accept Insurance Bonds in lieu of Bank Guarantees under a planning agreement.
- 6) Council will not accept registration of a planning agreement on the title of the land to which the planning agreement applies in lieu of other forms of security referred to above.
- 7) If a Bank Guarantee is required to be provided to secure the provision of works, Council may require that Bank Guarantee to be provided in an amount which exceeds the agreed value of the works as set out in the planning agreement. The basis for that is that the works may not be provided for some time after the planning agreement is entered into, and the actual cost of providing those works may greatly exceed the estimated value as set out in the planning agreement.
- 8) Security in the form of an unconditional bond or bank guarantee may be provided in a staged manner reflective of the staging of the proposed development as set out under the planning agreement.

The nature and extent of the enforcement provisions in the planning agreement will be a matter for negotiation between Council and the Developer having regard to the particular circumstances of the planning agreement.

8.6. Registration of Planning Agreements

Council will require a planning agreement to contain a provision requiring the Developer to agree to registration of the planning agreement (at the developer's cost) pursuant to Section 7.6 of the EP&A Act.

On execution of the planning agreement and until it is registered on title, the Developer may be required to consent to Council lodging a caveat on the title of the relevant land until the planning agreement is registered.

The Developer must obtain all the necessary documents required to facilitate the registration of the planning agreement on the title to the land, including the written consent of any parties with interests in the land. Written consent of all relevant parties should be obtained by the developer, prior to the planning agreement being reported to Council following exhibition. This will avoid delays at the execution stage, particularly where there is a large number of interested parties (e.g. strata subdivided properties).

8.7. Notations on Certificates

Council will require a planning agreement to contain an acknowledgement by the Developer that Council will make a notation under Section 10.7(5) of the EP&A Act about a Planning Agreement on any certificate issued under Section 10.7(2) of the EP&A Act relating to the land the subject of the agreement or any other land.

8.8. Works

Where works are to be provided under a planning agreement, the planning agreement will specify:

- 1) the design process required to be followed in respect of the works (if any), including a requirement for Council to review and approve any such design where appropriate;

- 2) the timing for completion of the works;
- 3) the standard of the works; and
- 4) rectification of defects in respect of the works,

as generally included in Council's Planning Agreement Template.

8.9. Dispute Resolution

A planning agreement must have a dispute resolution mechanism pursuant to s7.4(3)(f) of the EP&A Act.

The dispute resolution mechanism set out in Council's Planning Agreement Template is Council's preferred position with respect to dispute resolution under a planning agreement.

8.10. Value of Public Benefits Under a Planning Agreement

The value of a benefit proposed under a planning agreement will be determined prior to the planning agreement being publicly notified. There are numerous methods of determining such values and the methodologies for valuing the public benefits set out in this section are to be used as a general guide only. Accordingly, Council is not bound to follow such methodologies but may elect to do so on a case-by-case basis.

If a contribution under a planning agreement is the carrying out of works for a public purpose, Council may value the particular development contribution on the basis of a cost estimate for the completed works. This may be prepared by a suitably qualified quantity surveyor or a valuer (as the case may be) appointed by Council and paid for by the Developer.

If the offered works or land are contained in a contributions plan that has been adopted by Council and that plan is in force, the value of works or land will be the value identified in that plan or the actual value of the completed works, whichever is less.

Where the development contribution under a planning agreement includes the dedication of land and the value of that land is to be taken into account, Council may seek to value the benefit on the basis of the estimated amount of compensation to which the developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) upon the compulsory acquisition of the land or by seeking the services of an appropriately qualified independent land valuer, as appointed by Council and at the cost of the Developer, in order to value the land being dedicated.

All costs associated with the valuation of public infrastructure to be included in a planning agreement by other professionals engaged by Council will be met by the Developer.

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

Council will generally seek to ensure that monetary contributions required to be paid under a planning agreement are increased by reference to an appropriate index (such as the consumer price index) from the time of the formation of the planning agreement until the relevant monetary contribution is paid.

8.11. Assignment and Dealings by the Developer

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

- a) The Developer has, at no cost to Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of Council by which that person agrees to be bound by the agreement as if they were a party to the original agreement; and
- b) If the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, such documents provide for an agreement by the person to the effect that they, and any receiver appointed by them, will not enjoy rights greater than those of that party;
- c) The party is not in breach of this agreement; and
- d) Appropriately notified Council in writing of the above.

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

8.12. Planning Agreements and Council's Compulsory Acquisition Power

A planning agreement may include an obligation on a Developer to make a monetary development contribution to Council to meet some, or all, of the costs incurred by Council in undertaking the acquisition of land.

A planning agreement cannot impose an obligation on Council to use the compulsory acquisition power conferred on it under the *Local Government Act 1993* (NSW), the *Roads Act 1993* (NSW) and the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Any such acquisition of land by Council may only be undertaken for a public purpose and is subject to the approval of the Minister and the Governor. Council will not agree to compulsorily acquire land in a planning agreement where such an acquisition is for the sole benefit of the Development and does not serve a broader public purpose.

If Council resolves to acquire land for which a monetary Development Contribution is required to be paid under a planning agreement, Council cannot be subject to an obligation to acquire that land by a certain time, or at all.

8.13. Amendments to Planning Agreements

Council may agree to a provision in a planning agreement permitting the developer's/proponent's obligations under the agreement to be modified / varied in certain circumstances.

In some circumstances and depending on the nature of the modifications made, a planning agreement may need to be subject to the process outlined in Section 7.3.

8.14. Credits and Refunds

Council will generally not agree to a planning agreement providing for the surplus value under a planning agreement being refunded or provided as credit to the Developer or offset against development contributions required to be made by the Developer in respect of other

development in Council's LGA, including in circumstances where the value of the material public benefits provided under a planning agreement exceed the value of the contributions that would otherwise have been required to be paid under the relevant Contributions Plan.

8.15. Carrying out of Material Public Benefit Works

Upon entering into a planning agreement, the Developer will be legally obliged to undertake all necessary material public benefit works set out in the Schedule of Works annexed to the Planning Agreement. These works will be subject to a separate approval and/or a Construction Certificate issued by the Council or from an Accredited Certifier. The works will also be monitored by the Council subject to the quality assurance conditions imposed under the planning agreement and works which fail to meet such requirements will be subject to rectification.

8.16. Planning Agreement Register

A register of all executed planning agreements, containing all relevant information required by the EP&A Act and the EP&A Regulation, will be made available on Council's website.

SCHEDULE 1 - POTENTIAL BENEFITS AND INFRASTRUCTURE

Public Benefit	Indicative Rate of Provision	Examples and Opportunities
Active Open Space		
Playing Fields	1 per 4,000 people for high density areas 1 per 2,000 people for low density areas	Soccer and rugby fields, cricket ovals, athletics tracks/AFL ovals, additional fields on rural/urban fringe, additional fields within urban areas, co-location of fields on existing or new school sites and upgrade existing facilities to synthetic.
Passive Open Space		
Local Parks	1 per 2,000 people	New designated local parks/playgrounds within or surrounding development site, embellishment of existing open spaces to increase capacity (new play equipment or upgrade of facilities).
Riparian Embellishment		Planting, embellishment and revitalisation of riparian corridors, pocket parks within riparian corridors, enhanced public access opportunities, new or upgraded cycleways/pathways through riparian areas.
Town Squares/Urban Plazas		Town squares/urban plazas as part of new development within existing or future centres.
Community Facilities		
Community centres/Libraries	Subject to Council Library and Community Facilities Strategy	Additional floor space for library and community spaces to be integrated into development within centres and surrounding public transport nodes (such as new Sydney Metro North West stations) and planned town squares/urban plazas.
Traffic and Transport		
Roadworks	Rate of provision varied Dependant on scale and location	New road design and construction, road widening/extension, pavement reconstruction, intersection upgrades (provision of roundabouts or traffic signals), bus and traffic turning lanes, bridges (pedestrian/cyclist or vehicular), undergrounding of overhead powerlines.

Public Benefit	Indicative Rate of Provision	Examples and Opportunities
Public Domain Works		
Public Domain Improvement	<p>Rate of provision varied</p> <p>Dependant on scale and location</p>	Paving upgrades within existing centres or along major pedestrian routes, street tree planting, lighting and signage, public art and furniture, provision of new public domain works within new and emerging centres (including within and surrounding Sydney Metro North West rail precincts).

Note: The public benefits proposed as part of an individual planning agreement would be assessed having regard to the type and scale of the proposed development, the scale of demand for new infrastructure arising from the proposal, the location of the proposed development, the capacity of existing infrastructure within the locality surrounding each development and the impact of the contributions on development feasibility.

Notwithstanding this, to assist developers and the community in understanding Council's general priorities for planning obligation negotiations, the above list identifies the main type of benefits that Council will consider as well as any potential opportunities or projects which could benefit from contributions. It should be noted that the items listed would only be considered to be public benefits offered under a planning agreement where the works are not already required to be provided as part of the development under existing controls.

It is acknowledged that planning benefits actually proposed under a planning agreement may differ from these examples and other benefits which are not specifically identified may also be relevant when negotiated on a case-by-case basis, especially where planning benefits are also offered. Further, it is acknowledged that some planning agreements may seek to provide specific items of infrastructure, while others will provide a monetary contribution towards this infrastructure, which can be pooled and expended by Council as deemed appropriate.

SCHEDULE 2 - GUIDE FOR COUNCIL STAFF

1. Purpose of this Schedule

This procedure is intended to guide council staff in negotiating planning agreements.

1. Inter-relationship between a Development Application/Instrument Change and a Planning Agreement

1.1. Under the EP&A Act a planning agreement must be entered into in relation to either:

1. an application for development consent; or
2. an instrument change.

1.2. Ideally a planning agreement which relates to a Development Application:

1. will be proposed and negotiated prior to the determination of the Development Application;
2. publicly exhibited simultaneously with the public exhibition of the relevant Development Application; and
3. resolved to be entered into by Council at the same time (or as soon as reasonably practical after) a decision is made on whether or not to approve the relevant Development Application.

1.3. A condition of development consent may be imposed requiring the Developer to enter into the planning agreement in the form offered by the Developer prior to the determination of the development consent.

In that regard, s7.7 of the EP&A Act states as follows:

1. A provision of an environmental planning instrument (being a provision made after the commencement of this Section):
 - (a) that expressly requires a planning agreement to be entered into before a development application can be made, considered or determined, or
 - (b) that expressly prevents a development consent from being granted or having effect unless or until a planning agreement is entered into,has no effect.
2. A consent authority cannot refuse to grant development consent on the ground that a planning agreement has not been entered into in relation to the proposed development or that the Developer has not offered to enter into such an agreement.
3. However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the Developer in connection with:
 - (a) the development application, or

- (b) a change to an environmental planning instrument sought by the Developer for the purposes of making the development application,
- (c) or that is in the terms of a commitment made by the proponent in a statement of commitments made under Part 3A.

1.4. Council is still able to negotiate and enter into a Planning Agreement after a Development Consent has been granted, provided that the relevant planning agreement relates to the development permitted under that application.

ATTACHMENT 1: PLANNING AGREEMENT TEMPLATE



PLANNING AGREEMENT [ADDRESS / APPLICATION]

THE HILLS SHIRE COUNCIL

**[DRAFTING NOTE: INSERT NAME OF EXTERNAL
PARTIES]**

[INSERT DATE]

The Hills Shire Council
3 Columbia Court, Norwest NSW 2153
PO Box 7064, Norwest 2153
Phone (02) 9843 0555

SUMMARY SHEET

[Drafting Note: All items in the summary sheet reflect the mandatory matters that must be included in a Planning Agreement in compliance with 7.4(3) of the EP&A Act]

Council	Name	The Hills Shire Council
	Address	3 Columbia Court Norwest, NSW 2153
	Telephone	(02) 9843 0555
	Facsimile	(02) 9843 0258
	Email	council@thehills.nsw.gov.au
	Representative	General Manager
Developer	Name	[Drafting Note: to be completed]
	Address	[Drafting Note: to be completed]
	Telephone	[Drafting Note: to be completed]
	Facsimile	[Drafting Note: to be completed]
	Email	[Drafting Note: to be completed]
	Representative	[Drafting Note: to be completed]
Landowner [Drafting Note: Delete if there is no Landowner party. Insert other Landowner parties if there is more than one Landowner.]	Name	[Drafting Note: to be completed]
	Address	[Drafting Note: to be completed]
	Telephone	[Drafting Note: to be completed]
	Facsimile	[Drafting Note: to be completed]
	Email	[Drafting Note: to be completed]
	Representative	[Drafting Note: to be completed]
Land	[Drafting Note: to be completed]	
Development	[Drafting Note: to be completed]	
Designated Land	See Schedule 3	
Works	See Schedule 4	
Monetary Contributions	See Schedule 5	
Application of s7.11 and s7.12 of the Act	See clause 25	
Security	See clause 24	
Mechanism for Dispute resolution	See clause 31	

No obligation to grant consent or exercise functions	See clause 4
Planning instrument and/or development application	<p>(a) The Developer has sought a change to an environmental planning instrument. [Yes/No]</p> <p>(b) The Developer has made, or proposes to make, a Development Application. [Yes/No]</p> <p>(c) The Developer has entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. [Yes/No/Not Applicable]</p> <p>[Drafting Note: Indicate “Yes”, “No” or “Not Applicable” to (a) – (c) above]</p>

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Planning Agreement

Dated [Insert]

Parties

The Hills Shire Council ABN 25 034 494 656 of 3 Columbia Court, Norwest, NSW 2153
(Council)

"[Developer Name]" ABN "[Insert ABN]" of "[Insert Address]" New South Wales
"[Insert Postcode]" (Developer)

"[Landowner Name]" ABN "[Insert ABN]" of "[Insert Address]" New South Wales
"[Insert Postcode]" (Landowner)

[Drafting Note: Delete if there is no Landowner party. Insert other Landowner parties if there is more than one Landowner.]

Background

[Drafting Note: The Background must reflect the specific factual circumstances and in particular reflect compliance with 7.4(1) of the Act.]

- a) The [Developer/Landowner] owns the land.
- b) The Developer wishes to carry out the development.
- c) The Developer has [applied for]/[proposes to apply for]/[obtained] [Drafting Note: delete as applicable], the [Development Consent/Instrument Change] [Drafting Note: delete as applicable].
- d) The Developer has agreed to make the Development Contributions on and subject to the terms of this document.

Operative provisions

1. Defined Meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Planning Agreement Under the Act

The parties agree that this document is a planning agreement within the meaning set out in Section 7.4 of the Act and governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3. Application of this Document

This document is made in respect of the [Development]/[Instrument Change] [Drafting Note: delete as applicable] and applies to both the Land and to the Proposed Development.

4. No Restriction on Council's Powers

- 4.1. The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.
- 4.2. This document or anything done under this document:
 - 4.2.1. is not to be taken as approval or consent by the Council as a regulatory authority; and
 - 4.2.2. does not in any way operate to inhibit, deter or prejudice the power of Council to make any Law or the exercise by Council of any statutory functions, duties or powers,pursuant to the Planning Legislation (**Discretion**).
- 4.3. No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - 4.3.1. they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 4 is substantially satisfied; and
 - 4.3.2. in the event that paragraph 4.3.1 cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - 4.3.3. to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- 4.4. Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.
- 4.5. Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the [Development Consent and/or Instrument Change] [Drafting Note: Choose whichever applies], the Land or the Proposed Development in a certain manner.

5. Operation Of This Agreement

This document operates:

- 5.1. as a deed from the date that it is executed by both parties; and

- 5.2. as a planning agreement for the purpose of the Act from the date that the [Development Consent]/[Instrument Change] [Drafting Note: Choose whichever applies] becomes operative.

6. Designated Land

- 6.1. The [Developer]/[Landowner/s] [Drafting Note: Choose whichever applies] at their cost must dedicate the Designated Land to Council:
- 6.1.1. in accordance with Schedule 1 and Schedule 3; and
 - 6.1.2. free of any trusts, estates, interests, covenants and Encumbrances [other than those reasonably required by any authority in relation to the Development] [Drafting Note: Delete this wording if not applicable].
- 6.2. The Developer must meet all costs (including legal and registration costs) associated with the dedication of the Designated Land in accordance with this Clause 6, including any costs incurred by Council in relation to that dedication.
- 6.3. For the purpose of this document, Designated Land is dedicated to Council:
- 6.3.1. **(Deposited Plan)** if the relevant land is dedicated in a deposited plan registered at NSW Land Registry Services, when that plan is so registered; or
 - 6.3.2. **(Instrument of Transfer)** otherwise when the Developer delivers to Council:
 - (a) a transfer of the relevant land in registrable form;
 - (b) any consent required by an interested party in the relevant land; and
 - (c) any document in registrable form which, when registered, will remove any Encumbrances [other than those reasonably required by any authority in relation to the Development] [Drafting Note: Delete this wording if not applicable] registered on the title of that land.
- 6.4. Council must provide the Developer with a tax invoice for its reasonable expenses incurred in relation to the dedication of the Designated Land including its legal costs and disbursements on an indemnity basis (including any registration fees).
- 6.5. The Developer must pay to Council the amount invoiced for expenses under clause 6.4 within fourteen (14) days of receipt of the invoice.
- 6.6. The Developer must pay Council on reasonable notice the stamp duty (if any) on the dedication of the Designated Land.

7. Monetary Contributions

- 7.1. The Developer must pay the Monetary Contribution to Council in accordance with Schedule 5.
- 7.2. A Monetary Contribution is made for the purposes of this document when Council receives the full amount of the contribution payable under this document by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

8. Indexation of Contribution Values

- 8.1. The Developer must provide the Development Contributions to Council in accordance with this document.
- 8.2. The Contribution Values for each Development Contribution will increase (with the calculation to be made as from the date the relevant Development Contribution is

required to be provided to Council under this document) in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

A = the indexed amount;

B = the relevant amount as set out in this document;

C = the Producer Price Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the Producer Price Index most recently published before the commencement date of this document.

If **A** is less than **B**, then the amount of the relevant Contribution Value will not change.

9. Carrying Out / Completion of Works

9.1. The Developer must, at its own cost, carry out and complete the Works at the locations shown on the Location Plan.

9.2. The Developer's obligation under clause 9.1 exists irrespective of whether the Developer:

- a) carries out the Works itself, or
- b) enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.

9.2.1. Before the Developer commences the Works, the Developer, at its own cost must:

- a) prepare and submit to Council or a person specified by Council, detailed plans and specifications in relation to the item; and
- b) obtain Development Consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works.

9.2.2. Council (acting reasonably) may request that the Developer amend the plans and specifications after they are provided by the Developer, in which case the Developer must amend the plans and specifications and re-submit them for approval by Council under this clause.

9.2.3. The Developer must not commence the Works unless the Council or the person specified by the Council has given the Developer a written approval of the plans and specifications relating to the item.

9.2.4. The Developer is to carry out and complete the Works in accordance with any relevant Australian standards applicable to works of the same nature and in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council, in accordance with:

- a) any development consent issued with respect to the Works.
- b) all applicable laws, including those relating to work health and safety, and
- c) the specifications referred to in **Column 5 of Schedule 4**;

- d) this Document to the extent that it is not inconsistent with the Development Consent or an applicable law, and
 - e) the written approval given under clause 9.2.3.
- 9.2.5. It is the Developer's responsibility to ensure that everything necessary for the proper performance of its obligations under this document has been obtained by it.

10. Ownership of Works

- 10.1. Council accepts ownership, possession and control of, and risk in, any Works carried out on Designated Land when:
- a) those Works are Handed Over to Council; and
 - b) the relevant land has been dedicated to Council under this document.
- 10.2. On Hand Over, the Developer must cause the legal title in the Works and all materials and component of the Works to pass to Council free of all Encumbrances. The Developer warrants that after Hand Over the Works are not subject to any security interest (as defined in the *Personal Property Securities Act 2009* (Cth) (PPSA)) and any security interest noted in the Personal Property Securities Register has been discharged. The Developer indemnifies Council for all claims, costs, losses and expense Council may suffer arising from any breach of this warranty or any claim or action taken by any person in respect of any security interest (as defined in the PPSA) in the Works.

11. Determination of Value

- 11.1. For the purposes of this Document, the Parties acknowledge that the Contribution Value in relation to each Item of the Works is the amount specified in **Schedule 5** (as indexed from time to time).
- 11.2. If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this Document, determined at the date on which the Works is Handed-Over to the Council, is greater than the Contribution Value, then the Developer is not entitled to claim credit or reimbursement, as the case may be, for the difference.

12. Access to the land and location of Works

- 12.1. The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.
- 12.2. The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council owned land or a public road.

13. Protection of People, Property and the Environment

- 13.1. The Developer must ensure in relation to the carrying out of the Works that:
- a) all necessary measures are taken to protect people, property and the Environment,
 - b) unnecessary interference with the passage of people and vehicles is avoided;
 - c) nuisances and unreasonable noise and disturbances are prevented; and
 - d) it has complied with all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the Protection of the *Environment Operations Act 1997* (NSW).

14. Damage and Repairs to the Works

- 14.1. The Developer, at its own cost, must repair and make good to the satisfaction of the Council any loss or damage to the Works from any cause whatsoever which occurs prior to the date on which the Works are Handed Over to the Council.

15. Variation of Works

- 15.1. The Works are not to be varied by the Developer, unless:
- 15.1.1. the parties agree in writing to the variation,
 - 15.1.2. any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 15.1.3. the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 15.2. For the purposes of clause 15.1.1 a variation may relate to any matter in relation to the Works that is dealt with by this Document.

16. Hand-Over of Works

- 16.1. The Developer must give Council not less than twenty (20) business days written notice of:
- 16.1.1. the date on which it proposes to Hand-Over any Works to the Council, being a date not later than the Hand-Over Date; and
 - 16.1.2. the Items of Work the subject of the notice.
- 16.2. Council must, at any time before the date specified in the notice referred to in clause 16.1.1, direct the Developer in writing to carry out work specified in the notice to complete the Works in accordance with clause 9.2.4 before it is Handed-Over to the Council.
- 16.3. The Developer must comply with a direction according to its terms and at the Developer's own cost.
- 16.4. Before the Works are Handed-Over to the Council, the Developer must remove from the Land:
- 16.4.1. any rubbish or surplus material;
 - 16.4.2. any temporary works; and
 - 16.4.3. any construction plant and equipment, relating to the carrying out of the Works as the case requires.
- 16.5. The Works are taken to be Handed Over to Council when Council gives the Developer written notice to that effect.

17. Monetary Contribution for Maintenance of Works

[Drafting Note: Relevant if a maintenance contribution amount is being provided for the maintenance of works under the Development Consent and the intention is for this arrangement to be reflected in the Planning Agreement]

The Developer will provide a monetary contribution amount towards the ongoing maintenance and replacement costs of the public infrastructure provided through the Works being carried out by the Developer for a period of time as set out in Schedule 4 which is to be consistent with the conditions of consent for the development.

18. Failure to Carry out and Hand-Over Works

- 18.1. If Council considers that the Developer is in breach of any obligation under this document relating to the carrying out of the Works, Council must give the Developer a notice requiring:

- 18.1.1. the breach to be rectified to Council's satisfaction, or
- 18.1.2. the carrying out of the Works to immediately cease, except in relation to the rectification of the breach, and the breach to be rectified to Council's satisfaction.
- 18.2. A notice given under clause 18.1 is to allow the Developer a reasonable period (and in any case not less than twenty eight (28) days) to rectify the breach.
- 18.3. If the Developer fails to rectify the breach the subject of a notice given under clause 18.1, the Council may:
 - 18.3.1. call upon the Primary Security; and
 - 18.3.2. carry out and complete or make safe the Works.
- 18.4. For the purposes of clause 18.3.2:
 - 18.4.1. the Developer must allow Council, its servants, agents and contractors to enter the Land for the purpose of completing the Works; and
 - 18.4.2. any difference between the amount of the Primary Security called upon pursuant to clause 18.3.1, and the costs incurred by the Council in carrying out, completing, or making safe the Works, may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.

19. Works-As-Executed-Plan

- 19.1. No later than sixty (60) days after a notice is given under clause 16.5, the Developer must submit to Council a full Works-As-Executed-Plan in respect of the Works the subject of the notice.
- 19.2. The Developer must provide Council with the Work-as-Executed Plan(s) all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.

20. Rectification of Defects

- 20.1. During the Defects Liability Period Council may give to the Developer a Rectification Notice in relation to the Works specifying:
 - 20.1.1. Works requiring rectification;
 - 20.1.2. the action required to be undertaken by the Developer to rectify those Works; and
 - 20.1.3. the date on which those Works are to be rectified.
- 20.2. The Developer must comply with a Rectification Notice at its own cost according to the terms of the Rectification Notice.
- 20.3. When the Developer considers that rectification is complete, the Developer may give to Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.
- 20.4. Another site inspection may be conducted by Council to inspect the completed rectification works.
- 20.5. If the Developer does not comply with a Rectification Notice, Council may do such things as are necessary to rectify the defect and may:
 - 20.5.1. enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer;
 - 20.5.2. call upon the Defects Security to meet its costs in rectifying the defect; and

- 20.5.3. recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Defects Security and the costs incurred by Council in rectifying the defect.

21. Cost of Works carried out by Council

- 21.1. The parties acknowledge and agree that where, in accordance with this document, Council incurs a cost in carrying out, completing or rectifying a defect in the Works, Council may recover from the Developer in a court of competent jurisdiction its full costs, including costs determined in accordance with clause 20.4.
- 21.2. Council's costs of carrying out, completing or rectifying the Works in accordance with this document include, but are not limited to:
 - 21.2.1. the reasonable costs of Council's servants, agents and contractors reasonably incurred for that purpose;
 - 21.2.2. all fees and charges necessarily or reasonably incurred by Council in order to have the Works carried out, completed, made safe or rectified; and
 - 21.2.3. without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this document.

22. Indemnity and Insurance

- 22.1. The Developer indemnifies Council, its employees, officers, agents, contractors from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Developer of the Works and any other obligation under this documents , except to the extent that such losses, damages, costs, charges, expenses, actions, claims and demands are caused by Council, its employees, officers, agents or contractors.
- 22.2. The Developer must take out and keep current to the satisfaction of Council the following insurances in relation to the Works up until the expiration of the Defects Liability Period:
 - 22.2.1. contract works insurance, noting Council as an insured party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
 - 22.2.2. public liability insurance for at least \$20,000,000 for a single occurrence, which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - 22.2.3. workers compensation insurance as required by law; and
 - 22.2.4. any other insurance required by law.
- 22.3. If the Developer fails to comply with clause 22.2, Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid is a debt due and owing from the Developer to Council and may be recovered by Council as it deems appropriate including:
 - 22.3.1. by calling upon the Security provided by the Developer to Council under this Document, or
 - 22.3.2. recovery as a debt due and owing in a court of competent jurisdiction.
- 22.4. The Developer must not commence carrying out the Works unless it has first provided to Council satisfactory written evidence of all the insurances specified in clause 22.2.

23. Contamination

23.1. Definitions

For the purpose of this clause 23:

Contamination means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- 23.1.1. result in an Authority issuing a notice, direction or order under an Environmental Law; or
- 23.1.2. which would constitute a violation of contribution of contravention of any Environmental Law.

Contaminated means subject to Contamination.

Environmental Law means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

23.2. Warranties and Indemnities

The Developer:

- 23.2.1. warrants that as far as it is aware, and other than as disclosed to Council, the Designated Land is not Contaminated; and
- 23.2.2. indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of any relevant Authority.

23.3. Remediation

- 23.3.1. If Council becomes aware or reasonably suspects that any part of the Designated Land was Contaminated before the date of this document, Council may as soon as practicable notify the Developer in writing to that effect.
- 23.3.2. As soon as practicable after receipt of the notice pursuant to paragraph 23.3.1 the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of the Designated Land and provide copies of all reports on such investigations to Council (**Investigation Reports**).
- 23.3.3. As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Land might be dealt with so that it is no longer Contaminated.
- 23.3.4. Following the discussions pursuant to paragraph 23.3.3 the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Land is no longer Contaminated.

24. Provision of Security

[Drafting Note: Section 7.4(3)(g) requires the Planning Agreement to provide for enforcement of the Planning Agreement by suitable means such as a bond or bank guarantee. The form and value of security is a matter for negotiation between the parties and will depend on the nature and extent of the contributions being provided. The form of the following clause may require amendment to reflect the negotiated position, however is a standard provision for security by bank guarantee and dedication of land.]

24.1. Provision of Security

24.1.1. Prior to the issue of a Construction Certificate in respect of the Development, the Developer must deliver to Council separate Bank Guarantees:

- a) for the amount equivalent to the sum of the Contribution Values (Primary Security) [Drafting Note: amount of primary security may be negotiated between the parties on a case-by-case basis] for all items of Work which are required to be Completed prior to the issue of a Subdivision Certificate; and
- b) for an amount equivalent to (#%) [Drafting Note: Insert #% amount] of the sum of those Contribution Values (Defects Security), (collectively referred to as the Security).

24.1.2. The Developer may satisfy its obligations under clause 24.1.1 (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.

24.2. Replacement of Security

24.2.1. The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.

24.2.2. On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

24.3. Council may call on Security

24.3.1. In addition to any other right of Council in this document to call on the Security, if the Developer commits an Event of Default, Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.

24.3.2. If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

24.4. Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

24.5. Release of Primary Security

Unless:

- a) Council has made or intends to make a demand against any Security provided by the Developer;

- b) the Development Contributions on account of which that Security was provided have not been made; or
- c) the Developer is in breach of this document at the relevant time,
- e) Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) business days of such a request being made.

24.6. Release of Defects Security

Unless:

- a) Council has made or intends to make a demand against any Security provided by the Developer for that Stage;
- b) the relevant Defects Liability Period has not expired; or
- c) the Developer is in breach of this document at the relevant time,
- f) Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

24.7. Indexation of value of Contribution Value

- 24.7.1. The Contribution Values for the Works and any Security provided for the Works will be indexed annually in accordance with the ABS Producer Price Index (Non-Residential Building Construction for NSW) #3020.
- 24.7.2. The Developer must ensure that the Security held by Council at all times equals the indexed amount notified to the Developer by Council.

24.8. Compulsory acquisition of the Designated Lands

- 24.8.1. The Developer consents to the compulsory acquisition of the Designated Lands:
 - a) in accordance with the Acquisition Act; and
 - b) on the terms set out in this clause 24.8.
- 24.8.2. Council may only acquire the Designated Lands compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect the dedication of that land under this document.
- 24.8.3. If Council acquires the Designated Lands compulsorily in accordance with the Acquisition Act:
 - a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- 24.8.4. The parties agree that the provisions of this clause 24.8 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
- 24.8.5. If Council:
 - a) acquires the Designated Land under paragraph (24.8.3); and
 - b) is required to pay any compensation to a third party as a result of that acquisition,
 then the Developer must pay Council the amount of that compensation as a Monetary Contribution:

- a) within ten (10) business days of demand for payment being made by Council; and
- b) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

24.9. Council may withhold Subdivision Certificate

- 24.9.1. The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Development Contribution under this document.
- 24.9.2. Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Development Contribution under this document until such time as:
 - a) the breach is rectified; or
 - b) Council calls upon the Security provided by the Developer in respect of the Development Contribution to which the breach relates.

25. Easements Covenants and Restrictions on Title

- 25.1. Prior to any dedication of the Designated Lands to Council, the parties are to resolve what easements, covenants and/or restrictions on title must necessarily be created upon any subdivision of the Land, having regard to the provisions of Part 6 of the *Conveyancing Act 1919* (NSW).
- 25.2. The parties warrant one with the other to do all things necessary to procure the registration on title to the Land or title(s) to any relevant lot created by subdivision of the Land of any easement, covenant or restriction on title as referred to in this clause.

26. Application of Section 7.11 and Section 7.12 of the Act

26.1. Application

This document [does/does not/partly] [Note: Delete whichever does not apply] exclude[s] the application of Section 7.11 or Section 7.12 of the Act to the Proposed Development.

[Drafting Note: Section 7.4(3) of the Act allows a Planning Agreement to exclude the application of Section 7.11 and 7.12 in whole or in part. The drafting of this clause will depend on the extent to which those contributions are excluded. If the document partly excludes the operation of section 7.11, then detailed provisions need to be inserted in the document setting out the exact extent to which those sections are excluded.]

26.2. Consideration of Benefits

Section 7.11(6) of the Act [does/does not] [Note: Delete whichever does not apply] apply to the Development Contributions that are to be carried out or provided pursuant to this document.

[Drafting Note: If Section 7.11(6) applies, we must take into account the land, money or other material public benefit that the Developer has provided under this document when imposing contributions under Section 7.11 for developments in the area, or adjacent to the area of the Development.]

26.3. Section 7.24

This document does not exclude the application of Section 7.24 to the Proposed Development.

[Drafting Note: Section 7.24 is the section dealing with SIC and as such, this section can only be excluded by the Minister.]

27. Termination

27.1. Termination

27.1.1. This document terminates in the following events:

- a) The parties agree in writing to terminate the operation of this document at any time.
- b) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a notice issued in accordance with clause 30.
- c) The Development Consent [Any Development Consent if the development will be staged] lapses.

27.2. Consequence of termination

27.2.1. Upon termination of this document:

- a) all future rights and obligations of the parties are discharged; and
- b) all pre-existing rights and obligations of the parties continue to subsist.

27.3. Determination

27.3.1. This document will determine upon the Developer satisfying all the obligations imposed on it in full.

28. Private Certifiers

Where Council is not the certifying authority for any aspect of the Proposed Development the Developer must on the appointment of a private certifier provide a copy of this Agreement to the private certifier.

29. Notices

- 29.1. Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 29.2. Any notice may be served by delivery in person or by post or transmission by email to the address or number of the recipient specified in the Summary Sheet or most recently notified by the recipient to the sender.
- 29.3. Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a email read receipt before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

30. Breach Notice and Rectification

30.1. Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- a) the nature and extent of the alleged breach; and
- b) if:
 - I. the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
 - II. the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and

- III. the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

30.2. Events of Default

The Developer commits an Event of Default if it:

- a) fails to comply with a Breach Notice; or
- b) becomes subject to an Insolvency Event.

30.3. Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- a) carry out any work specified in the relevant Breach Notice itself; or
- b) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

31. Dispute Resolution

31.1. Disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document that dispute must be referred for determination under this clause.

31.2. No legal proceedings

The Parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

31.3. Notice of disputes (Dispute Notice)

A Party referring a Dispute for determination must do so by written notice to the other parties which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

31.4. Negotiated resolution and selection of expert

- a) On service of the Dispute Notice the receiving Parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each Party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within ten (10) business days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- b) If the nominated officers are unable to resolve the Dispute within ten (10) business days of service of the Dispute Notice they must endeavour within the following ten (10) business day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- c) If the nominated officers do not record the appointment of an expert within that following ten (10) business day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

31.5. Assistance to the Expert (the Expert)

31.5.1. Once the Expert has been appointed (the Expert), the Parties must:

- a) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and

- b) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- 31.5.2. The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.
- 31.6. Expert's decision
 - 31.6.1. The decision of the Expert must:
 - a) be in writing and give reasons; and
 - b) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
 - 31.6.2. The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
 - 31.6.3. The Expert's decision is final and binding on the parties.
 - 31.6.4. The Expert must act as an expert and not as an arbitrator.
- 31.7. Expert's costs
 - 31.7.1. The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.
 - 31.7.2. In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.
- 31.8. Confidentiality of information provided in dispute resolution process
 - 31.8.1. The parties agree, and must procure that Expert agree as a condition of his or her appointment:
 - (a) subject to paragraph 31.8.2, to keep confidential all documents, information and other material disclosed to them during or in relation to the Expert determination;
 - (b) not to disclose any confidential documents, information and other material except to a party or adviser or consultant who has signed a confidentiality undertaking; or if required by Law or any Authority to do so; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the Expert determination for a purpose other than the Expert determination.
 - 31.8.2. The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the Expert during the Expert determination relating to a possible settlement of the Dispute;
- (b) admissions or concessions made by a party during the Expert determination in relation to the Dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the Expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

31.9. Continual performance

- g) Each Party must continue to perform its obligations under this document while any dispute is being determined under this clause.

32. Registration of document on Title

32.1. Registration of this document

The Developer acknowledges and agrees that:

- a) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- b) an application for registration of this document is to be undertaken by the developer and at the developer's cost.

32.2. Obligations of Developer

32.2.1. The Developer, at its own expense, will promptly after this document comes into operation, and before the issue of any Construction Certificate or Subdivision Certificate for the Proposed Development, take all necessary and practical steps, and otherwise do anything reasonably required, to procure:

- a) the consent of each person who:
 - i. has an estate or interest in the Land; or
 - ii. is seized or possessed of an estate or interest in the Land;
- b) the execution of any documents; and
- c) the production of the relevant title documentation,

to enable the registration of this document in accordance with clause 32.1.

32.2.2. The Developer, at its own expense, will take all practical steps, and otherwise do anything that is reasonably required:

- a) to lodge this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) business days after that date; and
- b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

32.3. Discharge from the Register

The parties must do all things reasonably necessary to remove any notation relating to this document from the title to the Land on the earlier of:

32.4. the Developer's obligations under this document having been performed to Council's satisfaction; and

32.5. if this document is terminated or otherwise comes to an end for any other reason.

33. Costs

The Developer must pay or reimburse to the Council, the Council's costs associated with the negotiation, preparation, exhibition, legal review, execution and registration of this document within ten (10) business days of a written demand by the Council for such payment.

34. GST

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document. 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.

35. Assignment

35.1. Restriction on Assignment

Other than in accordance with this clause 35, the Developer may not:

- a) Assign any part of the Land; and/or
- b) Assign their rights or obligations under this document.

35.2. Procedure for Assignment

If the Developer:

- a) wishes to Assign any part of the Land; and/or
- b) wishes to Assign its rights or obligations under this document,

then the Developer must:

- c) provide a written request to Council for the consent of Council to the relevant Assignment;
- d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (Assignee) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
- e) obtain written consent of Council to the relevant Assignment (which cannot be refused if paragraph 35.2(d) is complied with); and
- f) at no cost to Council, procure:
 - i. the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
 - ii. the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.

Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph c) if, at the time the request is made, the Developer is in breach of this document.

36. General

36.1. Governing law and jurisdiction

- a) This document is governed by and construed under the law in the State of New South Wales.
- b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- c) Each party by execution of this document irrevocably, generally and unconditionally submits to the nonexclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

36.2. Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

36.3. Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

36.4. Obligation to act in good faith

The parties must at all times:

- a) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- b) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- c) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- d) be just and faithful in their activities and dealings with the other parties.

36.5. Pre-contractual negotiation

This document:

- a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

36.6. Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

36.7. Continuing performance

- a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- c) Any indemnity agreed by any party under this document:
 - i. constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and

- ii. survives and continues after performance of this document.

36.8. Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

36.9. Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

36.10. Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

36.11. Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

36.12. Representations and warranties

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

36.13. Severability

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

37. Definitions and interpretation

In this document unless the context otherwise requires:

Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
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Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW)
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ul style="list-style-type: none"> (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional written guarantee without any expiry date acceptable to Council issued by an Australian Bank.
Business Day	means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.
Claim	means against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Construction Certificate	has the same meaning as in the Act.
Contribution Value	means the amount specified in the Schedules for any of the Development Contributions in the column headed "Contribution Value" (as applicable).
Defects Security	has the meaning ascribed to it in clause 24.1.1b)
Designated Land	means the land required to be dedicated to the Council as specified in Schedule 3 .
Development Application [Drafting Note: Delete definition if Agreement only applies to an Instrument Change]	has the same meaning as the EP&A Act
Development Consent [Drafting Note: Delete definition and any references to Development Consent if Agreement applies to an Instrument Change only]	has the same meaning as the EP&A Act
Development Contribution	means the Monetary Contributions, the Designated Land and the Works. [Drafting Note: Delete whichever is inapplicable]
Dispute Notice	means written notice provided by a party referring a dispute for determination, specifying the nature of the dispute and a nominated officer of the referring party with sufficient authority to determine the dispute.
Defects Liability Period	means the period specified in Column 3 of Schedule 4 in relation to the Works specified in Column 1 of that Schedule commencing on the date a notice is given in relation to those Works.

Encumbrance	<p>means an interest or power:</p> <ul style="list-style-type: none"> a) reserved in or over an interest in any asset; b) arising under, or with respect to, a Bio-Banking Agreement; c) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or d) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
Environment	has the same meaning as set out in the Dictionary to the Protection of the Environment Operations Act 1997 (NSW).
Event of Default	has the meaning ascribed to is in clause 30.2 .
GST	means any tax, levy, charge or impost implemented under the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) (GST Act) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;
Hand-Over	means the hand-over to the Council of the Works in accordance with this document.
Hand-Over Date	means the date specified in Column 2 of Schedule 4 in relation to the Works specified in Column 1 of that Schedule corresponding to that date, subject to any extension of that date.
Hand-Over Notice	means a notice issued by the Council under clause 16.
Insolvency Event	<p>means the happening of any of the following events:</p> <ul style="list-style-type: none"> (a) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up. (b) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order. (c) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them. (d) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved. (e) A body corporate is or states that it is insolvent. (f) As a result of the operation of section 459F (1) of the Corporations Act 2001 (Cth) (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand; (g) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject

of an event described in section 459C(2)(b) or section 585 of the Corporations Act.

(h) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.

(i) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.

(j) A receiver, manager or receiver and manager is appointed to the Company.

(k) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.

(l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Instrument Change [Drafting Note: Delete definition if Agreement only applies to Development]	means [Drafting Note: set out the nature of the instrument change being sought (if applicable)]
Item of Works	means an item of the Works.
Land	means the "Land" as set out in Summary Sheet.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Location Plan	means the plan contained in Schedule 1 .
Monetary Contributions	means the monetary development contributions required to be paid to the Council as specified in Schedule 5 .
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Primary Security	has the meaning ascribed to it in clause 24.1.1.
Producer Price Index	means the Producer Price Index for NSW (Non-Residential Building Construction for NSW) #3020 published by the Australian Bureau of Statistics.
Proposed Development	means the proposed development as described in Schedule 2 .
Rectification Certificate	means a certificate to the satisfaction of Council to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.
Rectification Notice	means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Security	means the Primary Security and Defects Security (if applicable).
Subdivision Certificate	has the same meaning as in the Act.
Summary Sheet	means the summary sheet at the start of this document.

Works means the works specified or described in **Column 1 of Schedule 4** and includes any Item of Works and any part of any Item of Works.

Works-As-Executed-Plan means detailed plans and specifications of the completed Works.

38. Interpretation

In this document unless the context otherwise requires:

- a) clause and subclause headings are for reference purposes only;
- b) the singular includes the plural and vice versa;
- c) words denoting any gender include all genders;
- d) reference to a person includes any other entity recognised by law and vice versa;
- e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- f) any reference to a party to this document includes its successors and permitted assigns;
- g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- h) any reference to any agreement or document includes that agreement or document as amended at any time;
- i) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- j) the expression at any time includes reference to past, present and future time and the performance of any action from time to time;
- k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done, and the money paid on the immediately following Business Day; and
- p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated

Schedule 1 – Location Plan and Designated Lands Plan

[Drafting Note: Insert a copy of a Location Plan, showing the location of the Works on the Land as well as a Designated Land Plan, showing the land to be dedicated to Council (if applicable)]

Schedule 2 – Proposed Development

[Drafting Note: Insert a detailed description of the Proposed Development with reference to the number of lots (and type of lots i.e. residential) forming part of the subdivision of the Land (if applicable)]

Schedule 3 – Designated Land

Column 1	Column 2	Column 3	Column 4
Address of Land	Legal Description	Timing of Dedication	Contribution Value
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]

Schedule 4 – The Works

Table

Column 1	Column 2	Column 3	Column 4	Column 5
Items of Works	Hand-Over Date	Defects Liability Period	Contribution Value	Specification
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]
[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]	[Drafting Note: To be completed]

Schedule 5 – Monetary Contributions

Item	Time for Completion	Contribution Value
Monetary Contributions	<p>[Drafting Note: Insert time by which the Monetary Contribution must be paid to the Council.]</p> <p>In respect of timing, it will be most likely that the relevant Monetary Contribution will be required to be provided upon the earlier of:</p> <ul style="list-style-type: none">• the issuing of a subdivision certificate to create a lot in the subdivision; or• the issuing of a construction certificate in respect of any development to be carried out on the Land. <p>However, there may be different timing requirements.]</p>	<p>[Drafting Note: Insert amount of the Monetary Contribution]</p>

Execution Page

Executed as a deed

The common seal of The Hills Shire Council
was affixed under a resolution passed by
council on
in the presence of:

General Manger

Mayor

Print Name

Print Name

Witness

Print Name

Signed, sealed and delivered by the Developer
in accordance with s127 of the Corporations
Act 2001 (Cth):

Director/Secretary (Signature)

Director (Signature)

Print Name

Print name