City of Ryde

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Planning Agreement Guideline

VOLUNTARY PLANNING AGREEMENTS (VPA) GUIDELINE

City of Ryde
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1. Introduction

The Planning Agreement Guideline (Guideline) is to be read in conjunction with the Planning Agreement Policy (Policy).

The Guideline applies to all Planning Agreements to be entered into by Council and applies to all land within the Ryde Local Government Area (LGA).

Whist the Guideline has been reported to Council, it has not been adopted, and it is intended to be updated from time to time without a Council resolution.

1.1 Purpose

The Guideline sets out Council's procedures relating to Planning Agreements under section 7.4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The purpose of this Guideline is to establish a framework to guide the use of Planning Agreements by Council and assist stakeholders in understanding the Planning Agreement process.

A flowchart of the Planning Agreement process is contained at Annexure B.

2. Requirements of a Planning Agreement Offer

2.1 What constitutes an offer?

Council requires a formal written offer for assessment ahead of entering into a Planning Agreement. A written offer should include as much information as possible, including but not limited to the following:

(a) The offer should be addressed to Council's Chief Executive Officer and marked to the attention of Council's Development Contribution Coordinator. The Offer should be submitted to cityofryde@ryde.nsw.gov.au;

(b) List of all land to which the Planning Agreement relates, including its legal description;

(c) Details on the Development Application or Planning Proposal that relates to the Planning Agreement;

(d) The Developer's details;

(e) If the Developer is not the owner of the subject land, then the landowner's details and whether the land owner intends to enter into the Planning Agreement as well (if not, owner's consent will be required);

(f) Be signed by the Developer and/or landowners involved;

(g) Whether the Planning Agreement seeks to wholly or partly exclude section 7.11 or 7.12 contributions.

(h) The public benefits being offered under the Planning Agreement, an explanation on how they address the impacts of the proposed development, and details on the timing that they will be delivered;

(i) Evidence to support the valuation of the proposed public benefits; and

(j) The nature of the security to be provided.

In accordance with the Policy:

- All formal offers to enter into a Planning Agreement are to be accompanied by a valuation of works and/or land.
- The acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council.
- Fees and Charges are payable for the assessment of an offer.

2.2 How will a Planning Agreement be assessed by Council

Planning Agreements can be used to provide contributions that meet the demand for new public infrastructure, amenities and services created by a development. Whilst Planning Agreements do not need to demonstrate a nexus, all offers will be assessed on whether the infrastructure demands created by the proposed development are appropriately and reasonably addressed by the public benefits under an offer.

In addition to the considerations required under the Policy, Council may also consider the following matters in the assessment of a Planning Agreement.

(a) Whether the infrastructure demands of the proposed development have been appropriately identified and addressed;

(b) Is the public benefit commensurate with the uplift that is sought;

(c) If the proposed benefits meet the planning and strategic objectives of Council;

(d) Any ongoing operational and lifecycle costs for Council;

(e) If recurrent funding of proposed facilities is required;

(f) Sustainability requirements for the acceptance of built assets (e.g. Green Star certification for buildings to be dedicated)

2.3 The role of the Infrastructure Coordination Committee

Council has established an Infrastructure Coordination Committee (ICC) to support effective decision making regarding the management of development contributions and the assessment of Planning Agreements.

When an offer to enter into a Planning Agreement is received, the Infrastructure Coordination Working Group (ICWG) will conduct an initial assessment and make a recommendation to the ICC. The ICC will consider the ICWG assessment and make a recommendation to Council's

Executive Leadership Team (ELT) on whether Council or its delegate should support the offer or not.

Once Council or its delegate provide in-principle support to an offer, Council officers can commence preparation of a draft VPA for public notification. The ICC will generally need to consider the outcomes of any public notification before it can be progressed to execution.

2.4 Valuation of the offer

In accordance with the Policy, all offers must be accompanied by a valuation report prepared by a suitably qualified quantity surveyor or land valuer (depending on the particulars of the offer).

A Planning Agreement must demonstrate how the public benefit addresses the infrastructure demands and impacts of a proposed development. In circumstances where infrastructure demand is difficult to predict or where the proposed development is inconsistent with the existing planning framework, Council or a Developer may use a Residual Land Value (RLV) assessment to demonstrate that contributions are commensurate with the proposed uplift.

An RLV assessment identifies the change in land value resulting from the proposed development. Generally, contributions should be equivalent to 50% of the uplift. Council may procure an independent review of a Developer's RLV assessment if required.

3. Guideline for negotiating a Planning Agreement

3.1 When should negotiations commence?

Developers are strongly encouraged to commence discussions with Council as early as possible. Ideally, discussions will commence before an application has been submitted. This early communication can help to inform a VPA offer and may expedite and simplify the assessment process. Council offers pre-lodgement advice on VPA discussions.

3.2 Who will negotiate a Planning Agreement on behalf of the Council

A Council officer with appropriate delegated authority will negotiate a Planning Agreement on behalf of Council.

The elected Councillors will not be involved in the negotiation of the Planning Agreement.

3.3 Parties to a Planning Agreement

The parties to a Planning Agreement are generally Council and the Developer. If the Developer is not the landowner, it is necessary for the landowner to be an additional party for the purpose of consenting to the registration of the Panning Agreement on title. Council will make an assessment of whether any other person or entity should be a party to a Planning Agreement on a case by case basis.

A Planning Panel may be required to be a party to a Planning Agreement in cases where the agreement seeks to exclude the payment of section 7.11 or 7.12 contributions.

3.4 Key steps in the negotiation process

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

(a) Prelodgement advice

(b) Written VPA offer submitted by Developer before or upon lodgement of the related Development Application or Planning Proposal;

(c) Council's ICC and ICWG will undertake an initial assessment of the offer;

(d) Negotiation on specific terms may occur between Council and the Developer.

(e) Should the Council (or its delegate) be of the opinion that the offer has merit, the parties may then proceed to the preparation of a draft Planning Agreement;

(f) Council will prepare the draft Planning Agreement for consideration by the developer;

(g) Once agreement is reached on the terms of the draft planning agreement, the draft planning agreement will be publicly notified;

(h) Following the public notification period, the parties may be required to undertake further negotiations and make changes to the planning agreement;

(i) The draft VPA is finalised for execution;

(j) The executed VPA is registered on the title of the relevant land.

3.5 Recurrent contributions

Generally, a Planning Agreement will only require a Developer to make contributions towards the recurrent costs of infrastructure until a public revenue stream is established to support the on-going costs of the facility, or for a time agreed between the parties.

3.6 Pooling of development contributions

Where a Planning Agreement provides for a monetary contribution by the Developer, and subject to any specific provisions in an executed agreement, Council may pool monetary contributions with other funds to allow for the accelerated delivery of public benefits in a fair and equitable way.

3.7 Treatment of actual costs in respect of delivering public benefits

If the costs of delivering public benefits that are to be provided by a Developer exceed the costs of those works as agreed with Council in a Planning Agreement:

(a) Council will generally not agree for those additional costs to be:

- Paid to the Developer; or

- off-set against any other development contributions required to be made by the Developer; and

(b) The Developer will not be able to make any further claim against Council for those additional costs.

4. Implementation and Operation of Planning Agreements

4.1 Drafting of a Planning Agreement

Unless otherwise agreed between the parties, Council will be responsible for drafting the Planning Agreement at the Developer's cost.

4.2 Execution of a Planning Agreement

A Planning Agreement is executed when it is signed by all parties.

A Planning Agreement can be entered into at any time after it has been publicly notified in accordance with the EP&A Act and Regulation and subject to Council (or its delegate) agreeing to enter into the Planning Agreement.

Council will usually require the execution of a Planning Agreement at the following times:

- In respect of a Planning Proposal, a Planning Agreement should generally be executed prior to Council requesting that the Minister make the instrument change referred to in the Planning Proposal, or before Council makes that instrument change under delegation.
- In respect of a Development Application, Council will seek to have the Planning Agreement executed prior to the grant of development consent. If the Planning Agreement is not executed prior to the grant of development consent, Council may impose a condition requiring the Planning Agreement to be entered into and, if relevant, registered on title either as a deferred commencement condition.

If a Planning Agreement in connection with a Planning Proposal is not executed at the appropriate time set out above, Council may request the Minister not to proceed with the instrument change, in accordance with s3.35 of the Act.

If required, Council may also impose conditions of consent on a Development Application requiring compliance with the Planning Agreement and the delivery of relevant contributions at the required time.

4.3 Delivery of development contributions under a Planning Agreement

The development contributions obligations under a Planning Agreement will arise upon execution of the Planning Agreement. The timing of delivery of contributions must be specified in the Planning Agreement.

4.4 Provision of security

Council will require a Planning Agreement to make provision for security to cover the Developer's obligations under the agreement. The type and timing of the security will depend on the type and timing of the obligations. The security requirements for Planning Agreement obligations are set out below:

Security for the delivery of land or works will generally be an unconditional bank guarantee of insurance bond from an Australian Bank in favour of Council to the full value of the developer's obligations plus a reasonable contingency and on terms otherwise acceptable to Council. Any amount to be secured by a bank guarantee or bond may also be adjusted annually in accordance with increases in the Consumer Price Index or other relevant index.

4.4.1 Monetary Contributions

Generally, the payment of monetary contributions will be tied to the issuing of certificates under Part 6 of the EP&A Act, usually prior to the issue of a Construction Certificate.

In some cases, particularly where the payment of monetary contributions is deferred until after the issuing of a Construction Certificate, Council may require a bank guarantee or insurance bond for the full contribution amount.

4.4.2 Dedication of land

Where land is required to be dedicated or transferred to Council or where Council is to receive the benefit of an encumbrance over land not to be owned by Council, Council will require the landowner to be a party to the Planning Agreement.

Generally, the dedication or transfer of land under a Planning Agreement will be required prior to the issue of an Occupation Certificate.

Council will require a Planning Agreement to include provisions allowing Council to acquire the land at no cost if the Developer defaults or is unable to meet its transfer or dedication obligations.

The Developer will be required to provide an unconditional bank guarantee or insurance bond from an Australian Bank in favour of Council to the full land value plus a reasonable contingency and on terms otherwise acceptable to Council.

4.4.3 Works

The Developer will be required to provide an unconditional bank guarantee or insurance bond from an Australian Bank in favour of Council to the full value of the works plus a reasonable contingency and on terms otherwise acceptable to Council.

4.4.4 Indexation of security

Security included with a Planning Agreement is to be subject to regular indexation to reflect increases in the Consumer Price Index (or other relevant index) published by the Australian Bureau of Statistics.

4.5 Detailed design plans and specifications

Council will generally require a Planning Agreement to make provision requiring detailed design plans and/or specifications to be provided to Council for approval prior to the commencement of any works to be delivered under a Planning Agreement.

4.6 Sustainability requirements

Where a Planning Agreement requires the delivery of built assets to the Council (particularly buildings), Council may require the works to adhere to Council's adopted Resource Efficiency Policy to ensure they meet Council's minimum efficiency standard.

4.7 Inspections

Council will require a Planning Agreement to make provision for the inclusion of mandatory inspections where works are to be delivered and/or land is to be dedicated, and in any other circumstance it considers appropriate.

4.8 Handover of development contributions under a Planning Agreement

Prior to the handover of a development contribution under a Planning Agreement, a final inspection must be arranged with Council. Following final inspection, Council will determine if a Certificate of Practical Completion can be issued.

If an asset is not at a standard that a Certificate of Practical Completion can be issued, the Developer must rectify any identified defects. A follow-up inspection must be arranged.

4.9 Defects liability period

Where a Planning Agreement includes the delivery of works or dedication of land, Council will require a Planning Agreement to make provision for the inclusion of a defects liability period and provisions of security for the defects liability period.

The defects liability period shall generally be two years from issue of a Certificate of Practical Completion. Security in the form of an unconditional bank guarantee will be held for the defects liability period. The amount of security will be determined by Council at its discretion, generally the amount will be 10% of the cost of works. In some cases, a higher rate may be applied depending on the risks involved for Council if there is a defect in the works.

4.10 Indexation of a development contributions under a Planning Agreement

All monetary contributions under Planning Agreements will be subject to indexation. The Planning Agreement will establish the indexation method.

4.11 Planning Agreement template

Council has prepared a Planning Agreement template which is provided as **Annexure A** to this Guideline.

The template is subject to change depending on the nature of the public benefits offered by the Developer and the negotiation process between the parties.

5. Planning Agreements within Macquarie Park

Planning Agreements have successfully supported the Macquarie Park Incentive Scheme since 2014.

Clause 7.7 of the *Ryde Local Environmental Plan 2014* (LEP) enables identified sites within Macquarie Park to utilise the incentive Height of Buildings (HOB) and incentive Floor Space Ratio (FSR) controls if development demonstrates adequate provision of:

(a) Recreation areas that are configured and located in a way that is appropriate for the recreational purposes of the Precinct; and

(b) An access network that is configured and located in a way that will allow a suitable level of connectivity within the Precinct.

This is addressed via a Planning Agreement to provide a monetary contribution calculated in accordance with the incentive rate in the adopted Fees and Charges. A monetary contribution may be offset by the direct delivery of any recreation and access network infrastructure (land/works) identified in Part 4.5 of the Ryde Development Control Plan 2014 and the Macquarie Park Design Guide (15 November 2024). The value of any offset for land/works is at the complete discretion of Council.

Monetary contributions received under the Incentive Scheme will generally be used to deliver infrastructure to support anticipated growth in the Macquarie Park Precinct.

5.1 Calculation of incentive monetary contribution within Macquarie Park

The incentive monetary contribution is calculated using the following two-step formula:

1. Proposed GFA – Maximum Base GFA = **Incentive GFA**
2. Incentive GFA x Macquarie Park incentive floor space rate (as per Council's adopted Fees and Charges) = **Incentive Monetary Contribution**

The applicable incentive floor space rate will be the rate as per Council's adopted Fees and Charges at the time that a Planning Agreement is executed. The Incentive Monetary Contribution is subject to quarterly indexation at time of payment in accordance with the Producer Price Index (Building Construction, NSW) released by the Australian Bureau of Statistics.

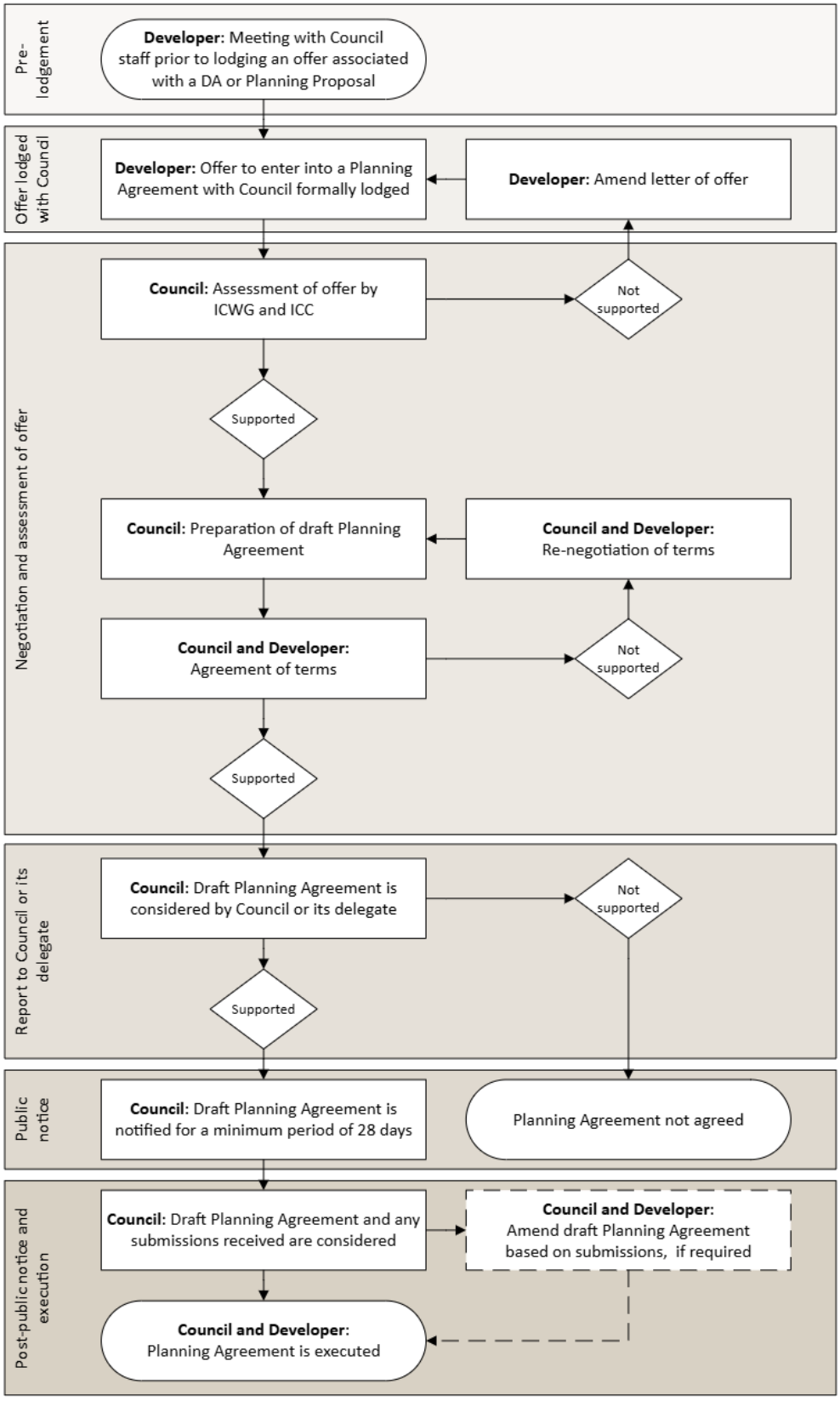
In circumstances where a development seeks to utilise the incentive HOB, but not the incentive FSR, the Incentive GFA will be calculated based on the proposed GFA above the base HOB control.

5.2 Offsets for delivery of works/land within Macquarie Park

At Council's complete discretion, the Incentive Monetary Contribution may be offset by the value of any recreation or access network works/land identified in the Ryde Development Control Plan 2014 and the Macquarie Park Design Guide (15 November 2024).

The value of any proposed land is to be calculated in accordance with the land dedication rate in Council's adopted Fees and Charges. The value of any proposed works must be supported by a valuation report prepared a suitably qualified quantity surveyor. Any offsets agreed by Council will be included in the Planning Agreement.

No offsets will be provided for the delivery of identified recreation and access network land/works against monetary contributions levied by the Macquarie Park Section 7.12 Local Infrastructure Contributions Plan 2025.

Annexure A: Planning Agreement Template

Annexure B: Planning Agreement Flowchart