



City of Ryde

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Planning Agreement Policy

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1. Introduction

1.1 Overview of Planning Agreements

Planning Agreements are voluntary agreements within the planning system that enable the delivery of innovative or complex infrastructure and public benefit outcomes in connection with applications under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Planning Agreements are flexible tools to secure public benefits for a variety of public purposes, some of which extend beyond the scope of standard planning processes or adopted development contribution plans.

Planning Agreements can be negotiated between Council and Developer/s; and in some cases, another Planning Authority depending on the circumstances.

1.2 Scope

This Policy applies to the use of Planning Agreements under Section 7.4 of the EP&A Act; and Works in Kind Agreements to enable Council to accept material public benefits under Section 7.11(5)(b) of the EP&A Act, to which the Council is a party. This Policy applies to all land in the City of Ryde Local Government Area (LGA).

This Policy should be read in conjunction with Council's Planning Agreements Guideline (Guideline) which contains advice on the assessment and operation of Planning Agreements.

1.3 Purpose

This Policy establishes a framework to guide the preparation of Planning Agreements and Works in Kind Agreements. The Policy objectives are to:

- Establish a fair, transparent and accountable framework governing the use of Planning Agreements and Works in Kind Agreements by Council;
- Give stakeholders in development greater involvement in the type, standard and location of public facilities and other public benefits; and
- Adopt innovative and flexible approaches to the provision of infrastructure and other public benefits in a manner that is consistent with Council's strategic and infrastructure plans.

This Policy is not legally binding; however, it is intended that the Council and all persons dealing with Council in relation to Planning Agreements and Works in Kind Agreements will follow this Policy to the fullest extent possible.

This Policy has been prepared in accordance with the EP&A Act, *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation), and the Department of Planning, Housing and Infrastructure's Local Infrastructure Contributions Practice Notes.

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2. Governance

2.1 Statutory requirements

Planning Agreements are governed by:

- Part 7 of the EP&A Act
- Part 9 in the EP&A Regulation
- Practice Notes published by the Department of Planning, Housing and Infrastructure (last updated in June 2025).

2.2 Principles

Planning Agreements will be guided by the following principles:

- Council will always consider a development proposal on its merits, not on the basis of a planning agreement offer;
- Planning Agreements should provide for public benefits that have some relationship to the development;
- Planning Agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls;
- Value capture should not be the primary purpose of a Planning Agreement;

2.3 Circumstances where Council may enter into a Planning Agreement

Council may consider Planning Agreements in connection with any application under Part 4 of the EP&A Act. This includes (but is not limited to) Development Applications, Planning Proposal, and State Significant Developments.

2.4 Consideration of Planning Agreements

When exercising its functions under the EP&A Act in relation to an application to which a Planning Agreement relates, Council will consider:

- (a) How the use of the Planning Agreement aligns with any relevant district and regional strategic plans and policies;
- (b) How the use of the Planning Agreement fits within the context of the Council's broader organisational strategic planning and land use planning policies, goals, and strategies;
- (c) The circumstances in which Council would consider entering into a Planning Agreement;
- (d) The land use planning and development objectives that are sought to be promoted or addressed by the use of the Planning Agreement;
- (e) The role served by the Planning Agreement in the development contributions and infrastructure funding systems of Council in the circumstances of the case;

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- (f) When, how and where the public benefits made under the Planning Agreement are proposed to be provided; and
- (g) That adequate infrastructure is available, or will be made available, via the Planning Agreement to support the development.

A Planning Agreement should generally be considered where an application will generate demand for infrastructure beyond what has been contemplated within the existing planning framework and Council's adopted development contribution plans.

The primary purpose of a Planning Agreement is to address the anticipated infrastructure demands of any associated application. Therefore, a Planning Agreement must identify the infrastructure demands created by an application and demonstrate how they are addressed.

In circumstances where the direct provision of infrastructure is not appropriate, Council or a Developer may consider tools such as a Residual Land Value (RLV) analysis to inform negotiations and demonstrate that contributions are proportionate, economically feasible, and aligned with strategic planning outcomes. While value capture is not the primary mechanism for determining contributions, it is one method that may be considered to identify infrastructure demands and address how they are met. In these circumstances, a contribution should generally be based on an equal portion of any potential uplift.

Council has the discretion not to enter into a Planning Agreement for any reason, including if the contribution is not considered to adequately address the impacts of the associated development.

2.5 Types of Public Benefits delivered under Planning Agreements

The contributions negotiated under a Planning Agreement could comprise of one or more of the following to be used or applied towards a public purpose:

- (a) Monetary contribution;
- (b) Provision of any material public benefit, including (without limitation) public facilities;
- (c) Dedication of land free of cost; or
- (d) Any combination of the above.

Council will require contributions under a Planning Agreement to provide a demonstrable net public benefit. The proposed benefit must provide a positive planning outcome for the residents of the Ryde LGA.

2.6 Relationship to Section 7.11 and Section 7.12 contributions

Planning Agreements typically provide public benefits in addition to standard development contributions under section 7.11 and 7.12 of the EP&A Act. The value of any section 7.11 or 7.12 contributions that would generally be required as a condition of development consent will not be considered as additional public benefit under a Planning Agreement.

However, at Council's discretion, Planning Agreements may partly or fully exclude the application of section 7.11 or 7.12 contributions, offering flexibility to address unforeseen or

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complex development impacts. The value of any excluded section 7.11 or 7.12 contributions must be considered in the assessment of the overall public benefit.

3. Negotiation and Assessment of Planning Agreement Offers

Council will assess any Planning Agreement offer in accordance with this Policy, relevant legislation and the Department of Planning, Housing and Infrastructure's Local Infrastructure Contributions Practice Notes.

Council's *Planning Agreements Guideline* (Guideline) also contains advice on the assessment and operation of Planning Agreements and should be read in conjunction with this Policy.

Developers are encouraged to discuss their intention to enter into a Planning Agreement as early as possible and ideally before the lodgement of a Development Application or Planning Proposal.

3.1 Offer of a Planning Agreement

Council will only consider a Planning Agreement if it receives a formal written offer containing sufficient information as outlined in the Guideline.

Council will not accept any component of a public benefit under the terms of a Planning Agreement if that component would normally be required to be provided by virtue of a condition of a development consent.

When deciding whether to accept a Planning Agreement offer, Council must consider factors such as the type and value of the public benefit and whether it adequately mitigates the impacts caused by the associated Development Application or Planning Proposal.

The acceptance of an offer to enter into a Planning Agreement or Works in Kind Agreement is at the absolute discretion of Council.

3.2 Acceptability test

Council will consider the following matters to assess the desirability of a Planning Agreement:

- (a) Is the proposed Planning Agreement directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to the development?
- (b) Does the proposed Planning Agreement provide for the delivery of infrastructure or public benefits not wholly unrelated to the development?
- (c) Will the proposed Planning Agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest?
- (d) Does the Planning Agreement provide for a reasonable means of achieving the desired outcomes and securing the benefits?

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- (e) Will the proposed Planning Agreement protect the community against adverse planning decisions?

3.3 Probity

Council will ensure that the negotiation of any Planning Agreement is fair, transparent and is directed at achieving public benefits in an appropriate manner.

To achieve this, Council will:

- (a) Comply with all legislative requirements;
- (b) Provide a copy of the Policy and Guideline to any person who seeks to enter into a Planning Agreement with Council;
- (c) Comply with Council's Code of Conduct;
- (d) Ensure that Council officers and Councillors understand the circumstances in which Planning Agreements are appropriate;
- (e) Ensure that Council officers and Councillors understand their particular role and responsibility, some of which carry the potential for conflicts of interest; and
- (f) Ensure that the community understands Council's role in the Planning Agreement process, including the objective assessment and administration of Planning Agreements.

Council will ensure that the person assessing the Planning Proposal or Development Application is independent and not the same person, or subordinate, of the person who negotiated the Planning Agreement on behalf of the Council.

3.4 Method for valuing public benefits under a Planning Agreement

The value of public benefits in a Planning Agreement must be determined before the agreement is finalised.

If a public benefit includes the provision of works or the dedication of land, the offer must include a valuation carried out by a suitably qualified quantity surveyor or land valuer. Council may seek an independent review of the valuations at the Developer's expense.

If a RLV assessment is undertaken as a method to identify and address anticipated infrastructure demand, a rate of 50% of the uplift will be considered by Council as a starting point for negotiations.

If a Planning Agreement proposes works and services that would normally be provided as a condition of development consent, then those works and services will not be deemed as additional public benefit.

3.5 Planning Agreements within Macquarie Park

Planning Agreements have successfully supported the Macquarie Park Incentive Scheme since 2014. The scheme applies to developments seeking to utilise the incentive height and floorspace provisions under Clause 7.7 of the Ryde LEP 2014. The Guideline contains advice on the assessment and operation of Planning Agreements under this scheme.

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4. Administration of Planning Agreements

4.1 Public notification of Planning Agreements

A Planning Agreement cannot be entered into, amended or revoked unless public notice is given and the Planning Agreement is first made publicly available for inspection for a minimum period of 28 days.

If practical, a draft Planning Agreement will be made publicly available at the same time as the Development Application or Planning Proposal.

Where significant or consequential amendments to a draft Planning Agreement are required after a public notification, Council officers will determine if re-notification is required.

4.2 Amendment to a Planning Agreement

Where Council has entered into a Planning Agreement and the parties to the agreement have agreed to vary the Planning Agreement, then a new letter of offer and a deed of variation will be required to be entered into to formally record the changes to the terms of the Planning Agreement.

The deed of variation for a Planning Agreement will need to be publicly notified for 28 days prior to the parties executing the document, the deed may also be required to be registered on the title of the subject land.

4.3 Costs of entering into a Planning Agreement

An offer to enter into a Planning Agreement is to be accompanied by an application fee published in Council's adopted Fees & Charges. Subsequent fees will be required if an offer is supported and progresses to the execution of a Planning Agreement.

Any external costs incurred by Council, including Council's reasonable legal costs, are to be paid by the Developer.

4.4 Provision of security and acquisition rights

Council will require a Planning Agreement to make provision for security to cover the Developer's obligations under the agreement. The types and quantum of security is dependent on the obligations in the Planning Agreement.

The form of security will generally be an unconditional bank guarantee or security 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.

The required security amounts are outlined in the Guideline.

Where the contribution under a Planning Agreement includes the dedication of land, Council will generally require a Planning Agreement to contain a right for Council to acquire the land at no cost if the Developer defaults or is unable to meet its transfer or dedication obligations under the agreement.

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4.5 Registration of Planning Agreements and caveat

Council will require a Planning Agreement to contain a provision requiring the Developer to register the Agreement on the title at the Developer's expense.

On execution of the Planning Agreement and until it is registered on title, the Developer will also be required to consent to Council lodging a caveat on the title of the relevant land.

4.6 Enforcement

Council will monitor and enforce the performance of the Developer's obligations under a Planning Agreement. The type of enforcement methods depend on the nature of the public benefit being provided and include, but are not limited to:

- (a) Provision of security to secure the delivery of works and maintenance in any defects liability period;
- (b) Rights to compulsorily acquire land from the Developer at no cost if the Developer fails to dedicate or transfer the land to Council;
- (c) Rights for Council to step in and complete works at the Developer's cost if the Developer fails to undertake the works;
- (d) Warranties, covenants, restrictions or easements on title to ensure the ongoing operation of public benefits after delivery; and
- (e) Linking construction certificates or occupation certificates to delivery of public benefits.

4.7 Modification and discharge of obligations

Council may agree to a provision in the Planning Agreement permitting the Developer's obligations to be modified or discharged in the following circumstances:

- (a) The Developer's obligations have been fully carried out in accordance with the Planning Agreement;
- (b) The Development Consent to which the Planning Agreement relates has lapsed;
- (c) The Local Environmental Plan which relates to the Planning Proposal connected with the Planning Agreement is subsequently amended by an environmental planning instrument made after the Planning Proposal in a way that prevents the development from proceeding, or declared to be invalid by a Court of competent jurisdiction;
- (d) The Developer has fully and completely assigned the Developer's interest under the Planning Agreement in accordance with its terms.

Such a provision may require the modification or revocation of a Planning Agreement in accordance with legislative requirements.

4.8 Use of monetary contributions for administration

Council will allocate up to 1.5% of all monetary contributions received under Planning Agreements to the ongoing administration and monitoring of all Planning Agreements. This ensures the effective and timely delivery of public benefits.

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5. Works in Kind Agreements

5.1 Overview of Works in Kind Agreements

Works In Kind Agreements enable Council to accept material public benefits (other than land) in lieu of monetary contributions under Section 7.11(5)(b) of the EP&A Act.

Work in Kind Agreements must deliver infrastructure that is identified in the works schedule of an adopted Section 7.11 contributions plan. These agreements do not require public notification in accordance with the EP&A Act.

5.2 Circumstances where Council may enter into a Works in Kind Agreement

A Works in Kind Agreement can only be executed following the granting of a development consent that is subject to a condition under Section 7.11 of the EP&A Act. Council may accept the delivery of the identified infrastructure in lieu of full or partial payment of the Section 7.11 monetary contribution required by the condition of consent.

Council has the discretion not to enter into a Works in Kind Agreement for any reason, including if it does not agree to the proposed value of the works in kind.

5.3 Assessment of Works in Kind Agreement Offers

Council will assess any Works in Kind Agreement offer in accordance with this Policy, relevant legislation and the Department of Planning, Housing and Infrastructure's Local Infrastructure Contributions Practice Notes.

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