



# PLANNING AGREEMENTS POLICY

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# PLANNING AGREEMENTS POLICY

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### 1. LEGISLATIVE REQUIREMENTS

#### *Environmental Planning and Assessment Act 1979*

- 1.1 The current legal and procedural framework for planning agreements is set in Subdivision 2 of Division 6 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). Council is also bound by the provisions of Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation).

Section 93F sets out the circumstances under which a planning agreement may be entered into. It provides that a planning agreement may be made between a planning authority (or two or more planning authorities) and a person (developer):

- a) who has sought a change to an environment planning instrument (such as a rezoning application); or
- b) who has made or proposes to make a development application; or
- c) who wants to enter into an agreement with or is otherwise associated with a person in one of the above two categories.

### 2. PURPOSE / OBJECTIVES

#### 2.1 Purpose

- 2.1.1 New urban development creates the need for additional public amenities and public services. Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) empowers Council to require new urban development to contribute towards the provision of these public services and amenities. Planning agreements are one mechanism to achieve this outcome.

- 2.1.2 The purpose of this policy is to:

- a) establish a fair, transparent and accountable framework governing the 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 area;
- c) set out Council's specific policies and procedures relating to the use of planning agreements within Council's area;
- d) give stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits;
- e) facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public benefits;
- f) enhance the understanding within Council's area as to possibilities for development and to bring about public benefits and planning benefits facilitated by planning agreements;
- g) specify the information to be submitted to Council for the purpose of preparing a planning agreement;

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- h) adopt innovative and flexible approaches to the provision of infrastructure and other public benefits in a manner that are consistent with Council's Community Strategic Plan; and
- i) achieve planning benefits to the wider community (this is supported by the Practice Notes for Planning Agreements, issued by the then Department of Infrastructure Planning and Natural Resources, now Department of Planning and Environment. A planning benefit means 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 a particular development on surround land or the wide community.)

2.1.3 The acceptance of an offer to enter into a planning agreement is at the absolute discretion of Council. Planning agreements are voluntary, but once entered into, they become legally binding contracts that apply to the subject land.

### 2.2 Relationship with Council's Strategic Community Plan

2.2.1 Any public benefits which are negotiated through a planning agreement will be consistent with Liverpool's Community Strategic Plan. The 7 directions of Liverpool are to create a:

- a) Vibrant and prosperous city;
- b) Liveable safe city;
- c) Healthy inclusive city;
- d) Proud engaged city;
- e) Natural sustainable city;
- f) Accessible connected city; and
- g) Leading proactive Council.

## 3. DEFINITIONS

| <b>Term</b>             | <b>Meaning</b>  |
|-------------------------|---|
| Act                     | <i>Environmental Planning and Assessment Act 1979</i>   |
| Contribution Rates      | The monetary contribution pursuant to a contributions plan within Liverpool Local Government Area.  |
| Council                 | Liverpool City Council  |
| Developer               | A person who has sought a change to a State Environmental Planning Policy or Local Environmental Plan that includes the making, amendment or repeal of an instrument, or who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person. |
| Development application | Has the same meaning as in the EP&A Act.  |

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| Development contribution    | Contribution provided by the developer under a planning agreement being a monetary contribution, the dedication of land free of cost to Council, any other material public benefit or any combination of them.   |
| DCP                         | Development Control Plan   |
| Explanatory Note            | A written statement that provides details of the objectives, nature, effect and merits of a planning agreement, or an amendment to or revocation of a planning agreement as required under the <i>Regulation</i> .   |
| Instrument Change           | A change to a State Environmental Planning Policy or Local Environmental Plan whether it be for the making, amendment or repeal of that instrument.  |
| LEP                         | Local Environmental Plan   |
| Planning agreement          | <p>A voluntary agreement or other arrangement between a planning authority (or 2 or more planning authorities) and a person (the developer) who:</p> <ul style="list-style-type: none"><li>a) Has sought a change to an environmental planning instrument;</li><li>b) Has made, or proposes to make, a development application; or</li><li>c) Has entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies,</li></ul> <p>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.</p> |
| Planning agreement template | <p>A template for future planning agreements in the following circumstances:</p> <ul style="list-style-type: none"><li>a) A change to a SEPP or LEP or a development application for development of an opportunity site in Liverpool City Centre (as identified in Liverpool LEP 2008), where a public benefit is provided;</li><li>b) A development application;</li><li>c) A shortfall in the provision of a particular item such as car parking in Liverpool City Centre.</li></ul> <p>Note that these are separate documents to this policy.</p>   |
| 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.   |

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|                     |   |
|---------------------|---|
| Planning obligation | An obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution.  |
| Public              | The community as a whole or, where context requires, a section of the community.  |
| Public benefit      | The benefit enjoyed by the public as a consequence of a development contribution.   |
| Public facilities   | Public infrastructure, facilities, amenities and services.  |
| Public purpose      | Includes (without limitation) any of the following: <ul style="list-style-type: none"><li>a) The provision of (or the recoupment of the cost of providing) public amenities or public services;</li><li>b) The provision of (or the recoupment of the cost of providing) affordable housing;</li><li>c) The provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land;</li><li>d) The funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or other infrastructure;</li><li>e) The monitoring of the planning impacts of a development;</li><li>f) The conservation and enhancement of the natural environment.</li></ul> |
| Regulation          | <i>Environmental Planning and Assessment Regulation 2000</i>  |
| SEPP                | State Environmental Planning Policy   |

**Note:** This policy adopts the terms used in the *Practice Note on Planning agreements* published by the former Department of Planning and Natural Resources (July 2005) and the definitions of the Act and the Regulation.

## 4. POLICY STATEMENT

### 4.1 Overview of planning agreements

#### 4.1.1 Circumstances for preparing a planning agreement

A planning agreement is normally, but not exclusively, entered into where there is:

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- a) A change to a SEPP or LEP;
- b) A development application, where there are commitments to specific actions from the developer and / or Council;
- c) A development application for development of an opportunity site in Liverpool City Centre (as identified in Liverpool LEP 2008), where a public benefit is provided; and
- d) A shortfall in the provision of a particular item, such as car parking, in Liverpool City Centre.

Planning agreements generally involve an agreement between a developer and Council whereby the developer when undertaking a development agrees to provide a public purpose such as:

- a) Land and / or;
- b) Works and / or;
- c) Monetary contributions to Council for the provision of land and works and / or;
- d) Contributions towards recurrent costs of public facilities through a planning agreement. Normally, the planning agreement will only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the ongoing costs of the facility, or for a time agreed between the parties.

### **4.1.2 Threshold for providing infrastructure**

There is usually a form of threshold in the planning agreement whereby the developer is required to provide one or more of the above items by a certain stage of development. A development may involve stages and a planning agreement may reflect this by having thresholds for various stages of a development whereby certain items are provided at each stage of development.

A planning agreement often involves, but may not necessarily be limited only to larger developments that may be built over several stages.

### **4.1.3 Pooling of funds**

In some circumstances, such as the provision of parking in the Liverpool City Centre, it is necessary to pool funds from multiple planning agreements or contribution plans in order to provide works or services in an efficient manner. The pooling of funds will only be considered where it will be the most effective method of providing a public benefit.

### **4.1.4 Relation of a planning agreement to contribution plans**

A planning agreement differs from development contributions under S94 or S94A of the Act in that it may require the developer to construct items. Under a S94 contributions plan Council can only require a developer to pay a monetary contribution or dedicate land free of charge or both. It should be noted that developers may choose to provide items in the contributions plan



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as part of their development and have a corresponding reduction in the monetary contribution.

A planning agreement may occur where there is already a contributions plan in place. The planning agreement may involve provision of certain items listed in the contributions plan while providing monetary contributions to Council for other items. Normally this would be for items that are not located on the site of the development. Where a planning agreement provides items that are in a contributions plan that applies to the site, the planning agreement may exclude monetary contributions for items. A planning agreement may bring forward items in a Contributions Plan work schedule.

### 4.1.5 Principles governing the use of planning agreements

Council's use of planning agreements will be governed by the following principles:

- a) Planning decisions will not be bought or sold through planning agreements;
- b) A planning agreement cannot impose an obligation to grant development consent or to exercise any function under this Act in relation to a change to an environmental planning instrument.
- c) Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, the Regulation or any other Act or Regulation;
- d) Council will not use planning agreements for any purpose other than a proper planning purpose;
- e) Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers;
- f) Council will not seek or consider benefits under a planning agreement that are wholly unrelated to particular development;
- g) When considering a development or rezoning application, Council will not give undue weight to a planning agreement;
- h) Council will not allow the interests of individuals, lobbyists, or interest groups to outweigh the public interest when considering a proposed planning agreement;
- i) Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements;
- j) A planning agreement must produce outcomes that are consistent with Council's Community Strategic Plan;
- k) A planning agreement must enable the establishment of works and /or services to be brought forward from that outlined in a schedule in a contributions plan; and
- l) 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 Section 5 and the general heads of consideration set out in Section 79C of the Act. Development that is unacceptable on planning grounds will not be given consent because of benefits offered by a developer. A planning agreement though may propose measures that

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can address planning issues that have been identified. It is noted that any exceptions to relevant development standards will be assessed in accordance with the provisions set out in cl.4.6 of Liverpool LEP 2008 or other planning instrument.

### 4.1.6 Acceptability test

Council's use of planning agreements will be governed by the following acceptability test. A planning agreement must:

- a) Be for proper or legitimate planning purposes, that can be identified from the statutory planning controls and other adopted planning policies applying to development;
- b) 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;
- c) Produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- d) Provide for a reasonable means of achieving the outcomes and securing the benefits proposed; and
- e) Protect the public against unreasonable, adverse environmental or amenity impacts.

## 4.2 Negotiating a planning agreement

### 4.2.1 Offer of a planning agreement

Generally a planning agreement should be offered, negotiated and documented before lodgement of a development application or before Gateway approval for a planning proposal so as to coincide with public notification.

Council's negotiation process for planning agreements aims to be efficient, predictable, transparent and accountable. Council will seek to ensure that the final negotiation of planning agreements runs in parallel with applications for planning proposals or development applications so as not to unduly delay the approval.

Where possible, Council will publicly notify a planning agreement at the same time as the application for the planning proposal or the development application to which it relates.

### 4.2.2 A change to a SEPP or LEP

Where it is proposed to change a SEPP or LEP to permit a development and the development is likely to require the provision of public infrastructure or services, a planning agreement may be an option. Where a developer proposes a planning agreement it must be supported by information identifying the scope of infrastructure needed to support the development and

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how this will be addressed by a planning agreement. The submission requirements are found in Section 4.2.6.

Where this information has not been provided to Council's satisfaction or in the opinion of Council that a precinct wide strategic planning study is required and has not been progressed to identify infrastructure needs, Council will require as a minimum, the planning agreement to incorporate payment to Council of the following amounts:

- Waterfront developments – minimum \$15,000 per dwelling and \$150 per sqm of floor area for commercial, retail and industrial developments; and
- Other developments – minimum \$10,000 per dwelling and \$100 per sqm of floor area for commercial, retail and industrial developments.

These figures are considered minimum figures only and must not be taken to be appropriate in anything but the most low-impact scenario.

The planning agreement must be generally consistent with Council's planning agreement template #1 (as amended from time to time).

### **4.2.3 A development application**

Where it is proposed to submit a development application and the development is likely to require the provision of local public infrastructure or services in excess of the contributions plan that applies to the site or where there is action required by Council as part of the agreement or the circumstances of the case, a planning agreement may be an option. Where a developer proposes a planning agreement it must be supported by information identifying the scope of infrastructure needed to support the development and how this will be addressed by a planning agreement. The submission requirements are found in Section 4.2.6.

The planning agreement must be generally consistent with planning agreement template #2 (as amended from time to time).

**4.2.4 A development application for development of an opportunity site in Liverpool City Centre**

Where it is proposed to submit a development application for development of an opportunity site in Liverpool City Centre, (as identified in *Liverpool LEP 2008 or any subsequent environmental planning instrument*), where a public benefit is provided, a planning agreement may be an option. Note that such sites need to be master planned and deliver public outcomes to achieve maximum potential. Where a developer proposes a planning agreement it must be supported by information identifying the scope of infrastructure needed to support the development and how this will be addressed by a planning agreement. The submission requirements are found in Section 4.2.6.

The planning agreement must be generally consistent with planning agreement template #1 (as amended from time to time).

**4.2.5 A shortfall in the provision of a particular item such as car parking in Liverpool City Centre**

Where it is proposed to submit a development application for a development in Liverpool City Centre, where the proposed on site car parking provision is less than that required by Council, a planning agreement may be an option for paying a contribution for the shortfall. In this circumstance, a development application must be accompanied by an offer to enter into a planning agreement with Council to contribute to fund off site car parking within Liverpool City Centre. The submission requirements are found in Section 4.2.6.

The planning agreement must be generally consistent with planning agreement template #3 (as amended from time to time).

**4.2.6 Submission requirements**

An offer to enter into a planning agreement with Council shall provide the following information:

**All offers for a planning agreement**

- a) Name of proponent;
- b) A description of the land to which the planning agreement will apply;
- c) Owner's consent for all properties to which the planning agreement will apply;
- d) Description of proposed development, including, where appropriate, proposed number of dwellings, floorspace, land use and land area;
- e) Any additional parties to the agreement;
- f) Information on relationship to relevant Council corporate strategy;

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- g) Any potential savings for existing contributions plan that applies to the site;
- h) Any particular benefits for wider community;
- i) Details on any staging of the development and commensurate staging of monetary contributions, including thresholds for provision of infrastructure and or land;
- j) Any dependencies for the proposed development or provision of infrastructure on other land holdings, provision of infrastructure by Council or another party;
- k) Any infrastructure need to be provided on Council or other land;
- l) Any infrastructure to be provided that involve a government authority; and
- m) Any consultation needed with a government authority.

### **Additional information where it is proposed to change to a SEPP / LEP or submit a development application**

- a) Information on relationship to any adopted Council land use strategy (where applicable);
- b) Background studies identifying impacts on existing infrastructure and additional infrastructure needed to support the additional development proposed on the site. This may include but not be limited to infrastructure involving:
  - Affordable housing;
  - Transport or other infrastructure;
  - Recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
  - Monitoring of the planning impacts of development;
  - Conservation or enhancement of the natural environment;
  - Water management cycle;
  - Mitigation of environmental impacts;
  - Traffic, car parking and public transport facilities;
  - Community facilities;
  - Drainage services; and
  - Open space and recreation facilities.
- c) Background studies may also be required to identify any need to compensate for the loss of or damage to a public amenity, service, resource or asset such as:
  - Public open space;
  - Public car parking;
  - Public access;
  - Water and air quality;
  - Bushland;

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- Wildlife habitat; and
  - Other natural areas.
- d) Reference may be made to situations where several nearby sites may also be seeking a similar zoning change and how this might impact or provide opportunities for the provision of infrastructure;
  - e) Details on any staging of the development and commensurate staging of individual items of infrastructure, including thresholds for provision of infrastructure and or land;
  - f) Details of any or all land / facilities provided up front;
  - g) The nature of the security to be provided for the public benefits;
  - h) Maintenance impacts of proposed infrastructure;
  - i) Details of the component of the contributions that would normally payable and that would be replaced by the planning agreement;
  - j) Identification of any potential savings for existing contributions plan that applies to the site;
  - k) Identification of any particular benefits for wider community;
  - l) Identification of any dependencies for the proposed development or provision of infrastructure on other land holdings, provision of infrastructure by Council or another party;
  - m) Identification of any infrastructure that needs to be provided on Council or other land;
  - n) Identification of any infrastructure to be provided that involves a government authority;
  - o) Identification of any consultation needed with a government authority; and
  - p) Identification of any infrastructure that is needed before any development can commence.

### **Additional information where it is proposed to develop an opportunity site in Liverpool City Centre**

- a) Information on relationship to Liverpool DCP 2008 - Part 4 Development in Liverpool City Centre.
- b) Information demonstrating public benefits proposed to be provided and how their provision satisfies the requirements of DCP 2008 - Part 4 Development in Liverpool City Centre.
- c) Details on any staging of the development and commensurate staging of individual items of infrastructure, including thresholds for provision of infrastructure and or land;
- d) Identification of any or all land/ facilities to be provided up front;
- e) The nature of the security to be provided for the public benefits;
- f) Details on the maintenance impacts of proposed infrastructure;
- g) Details on any particular benefits for wider community;

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- h) Details on any dependencies for the proposed development or provision of infrastructure on other land holdings, provision of infrastructure by Council or another party;
- i) Details on any infrastructure need to be provided on Council or other land;
- j) Details on any infrastructure to be provided that involves a government authority;
- k) Details on any consultation needed with a government authority;
- l) Details on how the development / Planning Agreement will operate; and
- m) Details on any infrastructure that is needed before any development can commence.

### **Additional information where there is a shortfall in the provision of a particular item such as car parking in Liverpool City Centre**

- a) The number of the shortfall in the required car parking spaces; and
- b) Information on relationship to Liverpool DCP 2008 - Part 4 Development in Liverpool City Centre.

#### **4.2.7 Matters that Council will consider**

The matters that Council may consider in any such negotiation may include, but not be limited to, the following, whether:

- a) The planning agreement meets the demands created by the development for new public infrastructure, amenities and services;
- b) Inclusions in the development meet the objectives of Council's Community Strategic Plan;
- c) 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;
- d) Rectification of an existing deficiency in the existing provision of public facilities in Council's area is made;
- e) Recurrent funding of public facilities is required or provided;
- f) The extent to which Council needs to monitor the planning impacts of development;
- g) Planning benefits for the wider community accrue from the planning agreement;
- h) Mitigation of the impact of development is addressed;
- i) Recurrent funding of public facilities is required in the establishment phase;
- j) Past deficiencies in infrastructure provision that would otherwise prevent a development from occurring are addressed;
- k) Monitoring the planning impacts of development is required by the developer;
- l) Any initial or ongoing costs are designated as Council's responsibility;

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- m) The timing of providing works or services is appropriate;
- n) There any relevant circumstances that may operate to preclude Council from entering into the proposed planning agreement;
- o) The proposed planning agreement will provide benefits that bear a relationship to the delivery of services and infrastructures within Liverpool LGA; and
- p) The quantum of the public benefit is commensurate with the value of the development contribution.

### 4.2.9 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:

- a) 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;
- b) 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;
- c) Notify 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;
- d) 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;
- e) Ensure that modifications to approved development should be subject to the same scrutiny as the original development application;
- f) Ensure that Councillors and members of Council staff understand their varied roles, to avoid any perceived or actual conflict of interest; and
- g) 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.

### 4.2.10 Public notification and procedure

A planning agreement cannot be entered into, amended or revoked unless there has been public notification of the proposed agreement for a period of at least 28 days, as per S93G(1) of the Act. The public notification of a planning agreement will be carried out as follows:



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- a) 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 Act and its notification requirements and seek public submissions;
- b) 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 agreement or the application, or their formal consideration by Council, or for any other reason; and
- c) Public submissions to planning agreement notifications will be assessed by Council in accordance with its Community Engagement Tool Kit.

### 4.2.11 Explanatory notes

An explanatory note will be exhibited in conjunction with the exhibition of a draft planning agreement, as per the requirements of clause 25E(1) of the Regulation. It must contain the following:

- a) A summary of the objectives, nature and effect of the proposed agreement, amendment or revocation; and
- b) An assessment of the merits of the proposed agreement, amendment or revocation, including the impact (positive or negative) on the public or any relevant section of the public.

The explanatory note must:

- a) Identify how the agreement, amendment or revocation promotes the public interest and one or more of the objects of the Act;
- b) Identify how the agreement, amendment or revocation promotes one or more of the elements of Council's charter under section 8 of the *Local Government Act 1993*;
- c) Identify a planning purpose or purposes served by the agreement, amendment or revocation, and contain an assessment of whether it provides for a reasonable means of achieving that purpose;
- d) Identify whether the agreement, amendment or revocation conforms to Council's capital works program; and
- e) State whether the 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.

The explanatory note will be prepared jointly with the other parties proposing to enter into the planning agreement.

## 4.3 Implementation and conditions

### 4.3.1 Preparation of the planning agreement

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A planning agreement will generally be consistent with the appropriate planning agreement template of Council. The particular planning agreement will include an explanatory note.

Council will require a planning agreement to make provision for payment by the developer of Council's costs of and incidental, to negotiating, preparing and entering into the agreement as well as administering and enforcing the agreement.

### **4.3.2 Commencement date of a planning agreement**

A planning agreement is entered into once it is signed by all of the parties. Council will usually require a planning agreement in relation to a SEPP or LEP to be entered into before Council submits the relevant draft SEPP or LEP amendment to the Director-General under sub-section 68(4) of the Act.

### **4.3.3 Monitoring and review of a planning agreement**

Council will continuously monitor the performance of the developer's obligations under a planning agreement and report them in accordance with the Act.

Council will require the planning agreement to contain a provision establishing a mechanism under which the planning agreement is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance under the agreement.

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### 4.3.4 Modification or discharge of obligations

Council may agree to a provision in a planning agreement permitting the developer's obligations under the agreement to be modified or discharged in the following circumstances:

- a) The developer's obligations have been fully carried out in accordance with the agreement;
- b) The development consent to which the agreement relates has lapsed;
- c) The development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate;
- d) The performance of the planning agreement has been frustrated by an event or events beyond the reasonable control of the parties;
- e) The developer has fully and completely assigned the developer's interest under the agreement in accordance with its terms;
- f) Other material changes affecting the operation of the planning agreement have occurred; and
- g) Council and the developer otherwise agree to the modification or discharge of the agreement.

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

### 4.3.5 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 assignee of all necessary documents in favour of Council under which the assignee agrees to be bound by the original planning agreement;
- b) The developer has, at no cost to Council, first procured replacement security from the assignee. Council may require the assignee to provide more security than the original developer if the assignee does not have the same financial standing as the original developer;
- c) 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; and
- d) The party is not in breach of the planning agreement.

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

### 4.3.6 Provision of security under a planning agreement

## PLANNING AGREEMENTS POLICY

Council will generally require a planning agreement to make provision for security to cover the developer's obligations under the agreement. The form of security will generally be an unconditional bank guarantee from an Australian bank in favour of Council to the full value of the developer's obligations under the planning agreement and on terms otherwise acceptable to Council.

### **4.3.7 Notations on certificates under S149 (5) of the Act**

Council will generally require a planning agreement to contain an acknowledgment by the developer that Council will make a notation under S149 (5) of the Act about a planning agreement on any certificate issued under s149 of the Act relating to the land the subject of the agreement or any other land.

### **4.3.8 Registration of planning agreements**

Council may require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to s93H of the Act if the requirements of that section are satisfied.

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

Council will require the relevant registered land owner to consent to and procure the consent of any other prior registered interests to the registration of the planning agreement and the caveat.

The costs of registering the planning agreement and the caveat on the title of the land are to be borne by the developer.

The developer must provide Council with all the necessary documents required to facilitate the registration of the planning agreement and caveat on the title to the land, including the written consent of any parties with interests in the land

Council is to lodge the planning agreement and the caveat for registration on the title of the land.

### **4.3.9 Dispute resolution**

A planning agreement must have a dispute resolution mechanism pursuant to s93F(3)(f) of the Act. A planning agreement must provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

### **4.3.10 Value public benefits under a planning agreement**

## PLANNING AGREEMENTS POLICY

The value of a benefit proposed under a planning agreement will be determined prior to the agreement being publicly notified.

If a development 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 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.

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 the services of an appropriately qualified land valuer, as appointed by Council and at the cost of the developer, in order to value the land being dedicated.

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.

## PLANNING AGREEMENTS POLICY

### **AUTHORISED BY**

Council Resolution

### **EFFECTIVE FROM**

27 July 2016

### **DEPARTMENT RESPONSIBLE**

Planning and Growth (Strategic Planning)

### **REVIEW DATE**

27 July 2018

### **VERSIONS**

| <b>Version</b> | <b>Amended by</b> | <b>Changes made</b> | <b>Date</b>  | <b>TRIM Number</b> |
|----------------|-------------------|---------------------|--------------|--------------------|
| 1              | Not applicable    | Adopted by Council  | 27 July 2016 | 089694.2016-011    |

### **THIS POLICY HAS BEEN DEVELOPED IN CONSULTATION WITH**

Corporate Services (Governance and Legal Services)

Planning and Growth (Development Assessment)

### **REFERENCES**

Liverpool City Council: Code of Conduct

Liverpool City Council: Community Engagement Policy

Liverpool City Council: Growing Liverpool 2023 – Liverpool City Council Community Strategic Plan

### **ATTACHMENTS**

Attachment A: Planning Agreement Policy Procedures



**PLANNING AGREEMENT POLICY  
PROCEDURES**



## PLANNING AGREEMENTS POLICY

### 1. PURPOSE

1.1 This procedure is intended to guide Council staff in negotiating Planning Agreements.

1.2 Steps in the negotiation process

The negotiation of a planning agreement will generally involve the following key steps:

- a) Prior to the lodgement of the relevant application by the developer, Council and the developer (and any other relevant person) 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;
- b) The matter will be reported to the elected Council where Council will formally decide whether to commence negotiations on a planning agreement;
- c) The parties will then appoint a person to represent them in the negotiations and also appoint a third person to attend and take minutes of all negotiations;
- d) The parties will decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it, and appoint such person;
- e) A timetable for negotiations and the protocols and work practices governing their negotiations will be agreed between the parties;
- f) The key issues for negotiation will be identified by the parties, and the negotiations over these issues will take place;
- g) If agreement is reached, the developer will prepare and submit a proposed planning agreement in accordance with the appropriate planning agreement template from Council, including the explanatory statement;
- h) The parties may undertake further negotiation on the specific terms of the proposed planning agreement as necessary;
- i) Once agreement is reached on the terms of the proposed planning agreement, the developer may then make the relevant application to Council accompanied either by a copy of the proposed agreement or by an offer to enter into such an agreement with specifics of the agreement set out in detail;
- j) A report will be submitted to the elected Council with a recommendation to proceed with exhibition or to proceed no further;
- k) Where Council supports exhibition of the draft planning agreement, it will publicly exhibit the application and planning agreement in accordance with the Act and its notification requirements;
- l) Council may negotiate further changes to the planning agreement having regard to any matters raised following public notification and exhibition; and
- m) Council may approve the application and set out the conditions for the agreement or, if an agreement has been executed, set out in the consent the terms of the agreement.



## **PLANNING AGREEMENTS POLICY**

The parties may be required to undertake further negotiations and, hence, a number of the above steps may need to be repeated as a result of the public notification process or its formal consideration by Council in connection with the relevant application.