

CONTENTS

PART A – INTRODUCTION	2
1. OBJECTIVES	2
2. SCOPE.....	2
3. POLICY STATEMENT	2
4. FUNDAMENTAL PRINCIPLES.....	2
5. PUBLIC INTEREST AND PROBITY	3
6. THE ACCEPTABILITY TEST	4
7. CIRCUMSTANCES IN WHICH COUNCIL WILL CONSIDER THE NEGOTIATION OF A PLANNING AGREEMENT.....	4
8. APPLICATION OF CESSNOCK LOCAL ENVIRONMENTAL PLAN (LEP) 2011 TO DEVELOPMENT TO WHICH A PLANNING AGREEMENT RELATES.....	5
9. NEGOTIATION, NOTIFICATION, EXECUTION AND FINALISATION OF PLANNING AGREEMENTS.....	5
10. WORKS IN KIND PROVISION IN PLANNING AGREEMENTS	5
11. RENEWABLE ENERGY – BENEFIT SHARING	5
12. STRATEGIC CONSIDERATION	5
PART B – Administration	5
13. ROLES AND RESPONSIBILITIES	5
14. POLICY DEFINITIONS AND ABBREVIATIONS.....	6
15. POLICY AUTHORISATIONS.....	8
16. POLICY ADMINISTRATION.....	8
17. POLICY HISTORY	9
18. APPENDICES	9

ACKNOWLEDGEMENT

Council acknowledges that within its local government area boundaries are the traditional lands of the Wonnarua people, the Awabakal people and the Darkinjung people. We acknowledge these Aboriginal peoples as the traditional custodians of the land on which our offices and operations are located, and pay our respects to Elders past and present. We also acknowledge all other Aboriginal and Torres Strait Islander people who now live within the Cessnock Local Government Area.

COUNCIL VALUES

Integrity, Respect, Teamwork, Accountability, and Excellence.

DISCLAIMER

The information contained in this publication is based on knowledge and understanding at the time of the adoption date and may not be accurate, current or complete at the time of viewing. While every effort has been made to ensure the accuracy of the information in this publication, Cessnock City Council expressly disclaims any liability to any person in respect of anything done or not done as a result of the contents of this publication or the data provided therein. Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

NOTICE

© Cessnock City Council. This work is copyright. It may be reproduced in whole or in part for study or training purposes subject to the inclusion of an acknowledgement of the source. It may not be reproduced for commercial usage or sale. Reproduction for purposes other than those

PART A – INTRODUCTION

1 OBJECTIVES

- 1.1. Establish a clear, open, transparent and accountable framework to govern the negotiation, use and implementation of planning agreements by Council towards the delivery of public infrastructure services and facilities in the Cessnock Local Government Area (LGA).
- 1.2. Ensure that the framework is soundly based upon probity and enables efficient, **equitable** and accountable negotiations and implementation of planning agreements.
- 1.3. Promote public trust and confidence in the processes of negotiation, execution and implementation of planning agreements.
- 1.4. Ensure that all parties involved have clarity about their roles and responsibilities when assessing, negotiating and implementing planning agreements.
- 1.5. Provide planning flexibility for Council to negotiate **equitable and reasonable local infrastructure contributions** by proponents of planning proposals and development applications (DAs).
- 1.6. **Ensure** consideration is also given towards conservation offsets towards the conservation, protection and ongoing management of land, which is off environmental value and significance in the LGA (including giving effect to Council's Biodiversity Offsets Policy).

2 SCOPE

- 2.1. This Policy applies to the negotiation, use and implementation of planning agreements concerning the LGA.

3. POLICY STATEMENT

- 3.1. Council is committed to the equitable and transparent approach to the negotiation, development and management of planning agreements to facilitate the delivery of public infrastructure to meet the needs of the community.

4. FUNDAMENTAL PRINCIPLES

- 4.1. Council's use of planning agreements will be governed by the following fundamental principles outlined in the [Planning Agreements Practice Note](#):
 - 4.1.1 Planning authorities should always consider a development proposal on its merits, not on the basis of a planning agreement.
 - 4.1.2 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.
 - 4.1.3 Strategic Planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population.
 - 4.1.4 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 proponent has not offered to enter into such an agreement.
 - 4.1.5 Planning agreements should not be used as a means of general revenue raising or to overcome revenue short falls, **unless they resolve a specific infrastructure funding gap that would otherwise prevent a development from proceeding, and all parties agree it is in the public interest.**
 - 4.1.6 Planning agreements must not include public benefits wholly unrelated to the particular

development.

4.1.7 Value capture should not be the primary purpose of a planning agreement.

5. PUBLIC INTEREST AND PROBITY

5.1 Public probity is fundamentally important to Council as it will ensure that the negotiation of any planning agreement is **equitable**, transparent and is directed at achieving public benefits in an appropriate manner, free of fraud and corruption.

5.1.1 In this regard, Council will:

- a) Provide the proponent with access to Council's Statement of Business Ethics.
- b) Ensure that all stakeholders understand the planning agreement system and each party's role in negotiating a planning agreement.
- c) Publicly notify planning agreements to ensure they are open and transparent and in accordance with relevant legislation and directives.
- d) Actively promote public awareness of the matters contained in a planning agreement and the potential benefits of an agreement.
- e) Ensure appropriate delegations and separation of responsibilities are maintained when considering **DAs** that involve planning agreements.
- f) Ensure that the role of Councillors, council management and staff in negotiating planning agreements are clearly defined (this ensures any potential for conflict of interest within Council will be appropriately managed in accordance with Council's Code of Conduct Policy).
- g) Take every step to ensure that conflicts of interest (actual and perceived) are declared, managed or mitigated, if not eliminated to the greatest extent possible.

5.1.2 If deemed applicable by the Local Infrastructure Contributions Steering Group, heads of agreement formally endorsed by the parties may be required. This can be the basis for drafting the planning agreement as a whole and be applied for other purposes in the interim, such as reporting to the elected Council in conjunction with the relevant planning proposal.

5.2 Public participation and notification

5.2.1 Public participation in the planning agreement process is important to ensure the community has an opportunity to provide input in decisions being made relating to public benefit and development. Planning agreements redistribute the costs and benefits of a development and it is critical the public can comment on whether they think the balance between development and public benefit is achieved successfully.

5.2.2 Once the planning agreement has been negotiated and documented, it must be publicly notified and made available for public inspection before they can be entered into in accordance with the Act and Regulation and any practice notes or directions released by the Department of Planning, Housing and Infrastructure.

5.2.3 The Regulation requires that the notification of a proposed planning agreement occurs at the same time as the planning proposal or **DA**, or if this is not practicable, as soon as possible after.

5.2.4 The terms of the planning agreement and its proposed public benefits should be clearly shown as part of consultation material. This will help the community make a fully informed decision on the overall proposal.

5.2.5 Planning agreements must be accompanied by an explanatory note to assist the public in understanding the agreement. Other types of consultation material are encouraged in

addition to the explanatory note. This might include additional written material, diagrams or plans.

5.2.6 Council will publicly re-notify a proposed planning agreement if, in Council's opinion as advised by the Local Infrastructure Contributions Steering Group, the changes materially affect:

- a) How any of the matters specified in section 7.4 of the Act are dealt with by the planning agreements.
- b) Other key terms and conditions of the planning agreements.
- c) The planning authority's interest or public interest under the planning agreements.
- d) Whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.

5.3 Fraud Control and Corruption Prevention

5.3.1 Councillors and staff must meet high standards of integrity and accountability when negotiating planning agreements. Council has a responsibility to:

- a) Protect taxpayer funded resources and assets from fraud and corruption.
- b) Ensure that its decisions and actions are free from fraud and corruption.

5.3.2 In this respect, all parties involved in negotiating a planning agreement will adhere to Council's [Fraud Control and Corruption Prevention Policy](#).

6. THE ACCEPTABILITY TEST

6.1 Planning agreements should be assessed by Council's Infrastructure Contributions Planner against the acceptability test, which determines the acceptability of the planning agreements. The test requires that planning agreements:

6.1.1 Are directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development.

6.1.2 Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development.

6.1.3 Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.

6.1.4 Provide for a reasonable means of achieving the desired outcomes and securing the benefits.

6.1.5 Protect the community against adverse planning decisions.

7. CIRCUMSTANCES IN WHICH COUNCIL WILL CONSIDER THE NEGOTIATION OF A PLANNING AGREEMENT

7.1 Council at its complete discretion by the Local Infrastructure Contributions Steering Group may consider the negotiation of a planning agreement with a proponent who has voluntarily offered to enter into such a planning agreement in association with a planning proposal or **DA. Council should be contacted as early as possible, if an applicant is seeking to enter into a planning agreement with Council in relation to planning proposal or DA.**

8. APPLICATION OF CESSNOCK LOCAL ENVIRONMENTAL PLAN (LEP) 2011 TO DEVELOPMENT TO WHICH A PLANNING AGREEMENT RELATES

8.1 Council will agree to having a provision in a planning agreement to justify a variation from applicable development standards **only if Council** is satisfied that the proposed matter of the planning agreement does in fact address the requirements of the Cessnock LEP in relation to the dispensation sought.

9. NEGOTIATION, NOTIFICATION, EXECUTION AND FINALISATION OF PLANNING AGREEMENTS

9.1 All planning agreements will be negotiated by Council's Infrastructure Contributions Planner in accordance with this Policy, Council's Planning Agreement Guidelines and relevant templates, EP&A Act and EP&A Regulations together with any ministerial direction or practice note.

10. WORKS IN KIND PROVISION IN PLANNING AGREEMENTS

10.1 Competitive tendering under section 55(1) of the Local Government Act 1993 (NSW) is not feasible before the Council enters into a planning agreement because the only possible primary party to the planning agreement other than Council is the person having the benefit of a development consent requiring the payment of a monetary section 7.11 contribution which will be wholly or partially offset under the planning agreement. For this reason, the Council has resolved that tenders will not be invited before the Council enters into such an agreement.

11. RENEWABLE ENERGY – BENEFIT SHARING

11.1 Council will consider large-scale renewable energy projects within its Local Government Area in line with the Department of Planning, Housing and Infrastructure's *Benefit Sharing Guideline* (November 2024) and any future updates. Relevant legislation, ministerial directions, circulars, practice notes, and other relevant documents will also guide the assessment. These, along with Council's Planning Agreement Guideline, will form the basis for any Planning Agreement negotiations.

12. STRATEGIC CONSIDERATION

12.1 Prior to the acceptance of any planning agreement, Council's Infrastructure Contributions Planner and Strategic Planning Manager will undertake a strategic review to ensure that the proposal will be delivered in accordance with Council's Strategic Planning Statement.

PART B – Administration

13 ROLES AND RESPONSIBILITIES

Compliance, monitoring and review

All compliance, monitoring and review of a Planning Agreement is to be conducted in accordance with the detail contained in the individual Planning Agreement, the Act, the Regulation and any direction from the Department of Planning, Housing and Infrastructure.

Responsibilities

Strategic Planning Manager is responsible for overseeing and supporting Council staff in negotiation of Planning Agreements, implementation and review of this policy.

Local Infrastructure Contributions Steering Group will oversee entering into a negotiation of a Planning Agreement including, but not limited to, reviewing the proposed offer and providing advice for the Planning Agreement.

Senior Infrastructure Contributions Planner is responsible for the negotiation of the Planning Agreement with the developer and reporting to the Local Infrastructure Contributions Steering Group and Strategic Planning Manager.

Reporting

After entering into a Planning Agreement with Council, any future reporting will be in accordance with the terms of the Planning Agreement.

Privacy and personal information handling

Personal information collected concerning Planning Agreements is being collected for the purpose of implementing this policy and Planning Agreements. This information will be used for the purpose outlined, related administrative functions, compliance and complaint handling, internal auditing, and in accordance with Council's Privacy Management Plan and Privacy Statement which can be found on Council's website.

Records management

Staff must maintain all records relevant to administering this policy in accordance with Council's Records Management Policy.

Complaints

Complaints or disputes concerning matters subject to a Planning Agreement are to be dealt with in accordance with dispute resolution clauses of that agreement.

Complaints regarding any other aspect of this policy should be lodged in accordance with Council's Complaints Handling policy.

14 POLICY DEFINITIONS AND ABBREVIATIONS

Term	Definition
Act	Means the <u>Environmental Planning and Assessment Act 1979</u> .
Agreed Value	Means the cost of the works to be delivered as agreed between all parties to the agreement.
Agreed Works	Means works to be delivered as agreed between all parties to the agreement.
Benefit Sharing	Benefit-sharing aims to distribute benefits generated by a project between the applicant and the community through mutually agreed opportunities such as funding or sponsoring local community initiatives, programs or projects.
Contributions Offset	The dedication of land and/or the construction of infrastructure required as part of Council's Section 64 Development Servicing Plans.
Council	Means Cessnock City Council.
Development Application	Has the same meaning as in the <u>Environmental Planning and Assessment Act 1979</u> .
Development Consent	Has the same meaning as in the <u>Environmental Planning and Assessment Act 1979</u> .
Local Infrastructure Contribution	Means the provision made by a proponent under a planning agreement being a monetary contribution, the dedication of land free of cost or the provision of a Material Public Benefit, or any combinations of the above.
Environmental Planning Instrument	Means an Environmental Planning Instrument (including a SEPP or LEP but not including a DCP) made, or taken to have been made, under Part 3 (of the Act) and in force.

Explanatory Note	Means a written statement that provides details of the objectives, nature, effects and merits of a planning agreement or an amendment to, or revocation of, a planning agreement.
Instrument Change	Means a change to an Environmental Planning Instrument to facilitate development which is the subject of a planning agreement.
Material Public Benefits	Consist of some physical (material) component, other than land dedication or monetary contribution, in settlement of the contributions levied upon the development consent, but does not include works nominated in a Contribution Plan's Work Schedule.
Plan	The applicable Section 7.11 Contribution Plan, depending upon the infrastructure within the Application Works in Kind Policy.
Planning Benefit	Means a Local Infrastructure Contribution that confers a net Public Benefit, i.e. a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.
Planning Agreement	Means a voluntary agreement or other arrangement between a planning authority and a proponent who has sought a change to an environmental planning instrument or made or proposes to make a development application or application for a complying development certificate under which the proponent is required to dedicate the land free of cost, pay a monetary contribution, provide other material benefit or a combination of all to be used or applied towards a public purpose.
Planning Authority	Has the same meaning as in Division 7.1 of Part 7 of the EP&A Act, along with: <ul style="list-style-type: none"> • a Council, or • the Minister for Planning, or • the Planning Ministerial Corporation, or • a development corporation (within the meaning of the Growth Centres (Development Corporations) Act 1974), or • a public authority.
Planning Obligation	Means an obligation imposed by a planning agreement on a proponent requiring the proponent to make a contribution.
Planning Proposal	Means a proposed change to the Cessnock Local Environmental Plan 2011 – a change to an Environmental Planning Instrument - to enable a development subject of an application to be made permissible and to carry out the development subject of the development application and planning agreement.
Practical Completion	Developer Works or a specified part of the Developer Works, occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the specified part.
Practice Note	Means any Practice Notes on Development Contributions published by the Department of Planning, Housing and Infrastructure.
Proponent	Means a person who has sought a change to an Environmental Planning Instrument through the lodgment of a Planning Proposal or who has submitted or proposes to lodge a development application – or, by formal agreement, is a representative of an applicant for such changes.
Public	Includes a section of the Public.
Public Benefit	Means the benefit enjoyed by the public as a consequence of development contribution.
Public Infrastructure	Means facilities, amenities and services.

Public Purpose	<p>Includes:</p> <ul style="list-style-type: none"> provision of, including recoupment of, the cost of public amenities or public services; provision of, including recoupment of, the cost of affordable housing; transport or other infrastructure relating to land; funding of recurrent expenditure relating to the provision of public amenities of public services, affordable housing or transport or other infrastructure; monitoring of the planning impacts of development; and conservation or enhancement of the natural environment.
Regulation	Means the Environmental Planning and Assessment Regulation 2000
Surplus Value	Means the value of the proponents' provision under a planning agreement more than the sum of the value of public works required to be carried out by the proponent under a condition imposed under Section 4.17 (1) of the Act and the value of Development Contributions that are or could have been required to be made under Section 7.11 or Section 7.12 of the Act in respect of the development subject of the planning agreement.
Works In Kind	Is the undertaking of work, or the provision of a facility, or the dedication of land as nominated in the Planning Agreements work schedule and includes reference to contribution offset.
Works In Kind Application	An application for Works in Kind, Material Public Benefit, contribution offsets or combinations thereof.
Works In Kind Agreement	A formal agreement that must be entered into with Council following Council approval of an application under this policy.

15 POLICY AUTHORISATIONS

No.	Authorised Function	Authorised Business Unit / Role(s)
1	Negotiation of Planning Agreements	Infrastructure Contributions Planner

16 POLICY ADMINISTRATION

Directorate	Planning and Environment		
Responsible Officer	Strategic Planning Manager		
Associated Procedure			
Policy Review Date	TBA	Is this a local policy pursuant to Part 3, Chapter 7 of the Local Government Act 1993 (NSW)?	No
Document Reference Number	DOC2025/107083		

This policy supports Council's compliance with the following legislation:

- Subdivision 2 of Division 7.1 of Part 7 of the Act;
- Division 1A of Part 4 of the Regulation;
- Planning Agreement Practice Note – February 2021; and
- Schedule 1 of the GIPA Regulation

This policy contributes to the achievement of the following desired outcome or objectives as per

Council's Delivery Program:

A Sustainable & Healthy Environment

Objective 3.1 Protecting & enhancing the natural environment and the rural character of the area.

Civil Leadership & Effective Governance

Objective 5.3: Making Council more responsive to the community.

Related Documents (include reference document numbers)	<ul style="list-style-type: none"> ▪ Works in Kind Policy (DOC2024/107083) ▪ Land Dedication Policy (DOC2025/105382) ▪ Records Management Policy (DOC2019/038769) ▪ Complaints Handling policy (DOC2018/048382) ▪ Privacy Management Plan (DOC2014/005148) ▪ Land Dedication Policy ▪ Works in Kind Agreement Policy
---	---

17 POLICY HISTORY

Revision	Date Approved / Authority	Description Of Changes
1	15 November 2017 PE61/2017	New Policy Adopted
2	25 May 2020	First periodic review of the policy
3	TBA	Second periodic review of the policy

18 APPENDICES