

PLANNING AGREEMENT GOVERNANCE POLICY

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**PREPARED BY:
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SUTHERLAND SHIRE

1. PURPOSE

The purpose of this document is to clarify Council's process and expectations for Planning Agreements to ensure;

- transparency and accountability to rate payers and residents with Council's processes for entering into and managing planning agreements, and
- that a long term, strategic view of planning agreements is taken. It ensures that continuous assessment and review of procedures are undertaken in a robust and transparent manner.

2. APPLICATION

This framework applies to all planning agreement activities undertaken by Council and is binding upon Councillors, Council employees and temporary staff, contractors and consultants while engaged by Council.

Schedule A provides specific details of how information must be provided by the Applicant and the way in which Council will apply the Principles to each proposal.

3. PRINCIPLES

3.1 Application of Principles

No one principle should be applied to the detriment of another. Principles must be collectively considered and applied to the extent that is reasonable and practicable in the circumstances.

3.2 Community Value

The assessment of the planning offer is based on value to the community. This will entail a financial and non-financial assessment of the benefits balanced against any dis-benefits generated as a consequence of the offer being accepted by Council. Current and future community needs are to be considered.

3.3 Voluntary Nature of the Planning Agreement

A planning agreement is a voluntary agreement under the Environmental Planning and Assessment Act 1979, between one or more planning authorities and a developer (or another person on the developer's behalf). Council acknowledges and upholds the voluntary nature of a planning agreement. Planning agreements can be offered as part of either a Planning Proposal or a Development Application.

3.4 Planning Decisions cannot be Bought or Sold

Planning agreements are governed on the principle that planning decisions cannot be bought or sold.

3.5 Planning Agreements cannot interfere with Statutory Functions

It is unlawful for planning agreements to restrict Council in the discretionary exercise of its statutory functions. All development applications and planning proposals will be considered on merit and will not be permitted solely based on planning benefits offered by applicants.

3.6 Public Purpose

Council upholds the value of a 'public purpose' as specified in the *Environmental Planning and Assessment Act 1979*. Council will only consider planning agreements that align with the current Community Strategic Plan, Delivery and Operational Plans, and any other relevant Council strategy, plan, or infrastructure need.

Decisions will have regard to whole of life costs and potential risk of any public infrastructure proposed to be provided by a planning agreement.

Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering planning agreements.

3.7 Ethical Actions

- Honesty and fairness: - all Council planning agreement processes must be conducted in a fair, honest manner, with the highest levels of probity and integrity and in the public interest. An independent third party must be able to see clearly that a process has been followed and that the process is fair and reasonable.
- Consistency: - Consistency must apply in all stages of the planning agreement process in accordance with this Policy and Section 7.4 Planning Agreement Guidelines.
- No conflict of interest: - A Council official with an actual, perceived or potential conflict of interest must declare and manage that interest without delay.

4. RESPONSIBILITIES

4.1 Council

The acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council, or through delegation to the Chief Executive Officer.

4.2 Responsible Officer – Finalisation and Execution of Planning Agreement

The Chief Executive Officer is the Responsible Officer for the approval of the final terms and conditions of the planning agreement where authority to finalise terms and conditions are delegated by the Council.. The Chief Executive Officer may decide to refer a Planning Agreement to Council for consideration and decision as to whether the Planning Agreement should be entered into.

The Chief Executive officer shall execute the Planning agreement in accordance with the Power of Attorney granted by the Council.

4.3 Responsible Officer – Process/Drafting and Execution of the Planning Agreement

The Manager Strategic Planning is the Responsible Officer for this policy and is responsible for management of the agreement process.

5. MONITORING

Voluntary Planning processes will be subject to review on a timeframe to be determined by Council's Audit, Risk and Improvement Committee based on a risk based Internal Assurance Program implemented by the Business Assurance Specialist.

Scheduled and ad-hoc review of implementation of individual planning agreements by the Manager Strategic Planning, to determine satisfactory delivery of the material public benefit. The Manager Strategic Planning will report progress and variance to the Executive.

Review of this policy and related documents will be undertaken by the Manager Strategic Planning or delegated employees to enable monitoring and associated compliance.

6. RECORD KEEPING, CONFIDENTIALITY AND PRIVACY

Council adheres to and complies with the *NSW State Records Act 1998* and *Privacy and Personal Information Protection Act 1998* through its Enterprise Content Management Policy and Privacy Policy.

7. BREACHES OF POLICY

Breaches of this policy will be dealt with in accordance with normal disciplinary procedures by the Chief Executive Officer.

8. RELATED DOCUMENTS

- Statement of Business Ethics
- Enterprise Content Management Policy
- Code of Conduct
- Work Health and Safety Policy
- Access to Information Policy

9. RELEVANT LEGISLATION, REGULATIONS AND GUIDELINES

- Local Government Act 1993 (NSW).
- State Records Act 1998 (NSW).
- Privacy and Personal Information Protection Act 1998 (NSW).
- Government Information (Public Access) Act 2009 (NSW).
- Environmental Planning and Assessment Act 1979 No 203
- Environmental Planning and Assessment Regulation 2000

10. DEFINITION OF TERMS

Term	Meaning
Council Officer	An employee of Sutherland Shire Council
Probity	A process consistent with Council policies and Legislation that ensures decision making is transparent and equitable.
Planning Agreement	A planning agreement is a voluntary agreement under the Environmental Planning and Assessment Act 1979, between one or more planning authorities and a developer (or another person on the developer's behalf).
Act	Environmental Planning and Assessment Act 1979 (EP&A Act)
Council	Council of the Sutherland Shire Council
Applicant	A person who has sought a change to an environmental planning instrument 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 Act
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.
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.
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	<p>Includes (without limitation) any of the following:</p> <ul style="list-style-type: none"> <i>(a) The provision of (or the recoupment of the cost of providing) public amenities or public services;</i> <i>(b) The provision of (or the recoupment of the cost of providing) affordable housing;</i> <i>(c) The provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land;</i> <i>(d) The funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or other infrastructure;</i> <i>(e) The monitoring of the planning impacts of a development;</i> <i>(f) The conservation and enhancement of the natural environment.</i>
Regulation	Environmental Planning and Assessment Regulation 2000

SCHEDULE A

Information for Interested Parties



1. Considerations for Planning Agreements

Voluntary Planning Agreements are part of the developer contribution system. The system includes Council's Section 7.11 and 7.12 contribution plans that have been adopted in accordance with the relevant provisions in the *Environmental Planning and Assessment Act, 1979 (the EP&A Act)*.

Council has a responsibility to ensure that a proposed planning agreement delivers a positive planning outcome for the Sutherland Shire community. There must be a demonstrable public benefit arising from an agreement and this should be clearly demonstrated in the offer documentation.

2. Governance Mechanisms for the Application of Principles

Each planning agreement proposed is unique in nature and provides varying degrees of public benefit. Expertise and knowledge from key stakeholders within Council is vital to ensure that the needs of the community are protected.

Good governance of planning agreements will include;

- Strategic alignment; ensuring that proposed Planning Agreement aligns with the intent of the Community Strategic Plan, Delivery and Operational Plans, and any other relevant Council strategy, plan, and infrastructure need.
- A process consistent with Council policies and Legislation that ensures decision making is transparent and equitable, and
- Whole of life cost; value for money can be demonstrated in both short and long term, without the creation of unacceptable financial liabilities for Council.

3. Critical Criteria for Consideration of an Offer

Council has the discretion not to enter into a Planning Agreement for any reason, including if the development contribution is not considered to deliver a sufficient demonstrable public benefit. In evaluating an offer, Council will consider whether the offer:

- a. Is an acceptable and reasonable use of a Planning Agreement
- b. Can be achieved via an alternate mechanism such as a condition of development consent.
- c. Meets the requirements of the Act and the Regulation.
- d. Rectifies an existing deficiency in the provision of public facilities and services
- e. Is directed towards proper or legitimate planning purposes
- f. Protects the interests of the community and the environment
- g. Is linked to an acceptable development application or planning proposal.

Notwithstanding the above, Council is not obliged to enter into a Planning Agreement

4. Information to be provided to Council

Any offer to enter in to a planning agreement with Council is to be initiated in writing to the Council by the Developer. A template planning agreement is available on the Council website for use by developers.

Any written offer is to contain the adequate information for Council to properly consider whether or not to accept the offer. The offer should contain at a minimum, but not be limited to:

- a. The land to which the Planning Agreement relates, including its legal description;
- b. Details of the Development Application or Planning Proposal that relates to the Planning Agreement;
- c. The Developer's details including the legal entity/ entities seeking to enter into the Planning Agreement;

- d. If the Developer is not the owner of the subject land, then the land owner's details and whether the land owner intends to enter into the Planning Agreement as well (if so, a written offer will also be required from the relevant land owner(s));
- e. The terms of the public benefit (cash, capital works and land) being offered under the terms of the Planning Agreement; and
- f. The nature of the financial security, to be provided for the Planning Agreements.

5. Process of Preliminary Acceptance of Planning Agreements

Once the final Planning Agreement offer has been submitted by the Applicant it must be confirmed as satisfactory and endorsed by the Executive and approved by Council through delegation to the Chief Executive Officer.

For planning agreements associated with a Development Application, this support for the offer is to be sought concurrently with the approval of the draft planning agreement and explanatory note, and the approval to exhibit the draft documents.

For planning agreements associated with a planning proposal, support for the Planning Agreement offer will be sought as part of the first Council report on the Planning Proposal, wherein the drafting of the Planning Agreement and explanatory note will be undertaken following Gateway determination by the Department of Planning.

6. Planning agreements associated with a Development Application

In order for Council to approve the offer:

- a draft planning agreement and explanatory note must be agreed to by the Developer, prior to the exhibition or lodgement of the development application,
- the Planning Agreement Steering Committee must endorse the Standard Agreement offer
- Councillors must endorse a Major Agreement offer, unless delegated to the Chief Executive Officer, and
- for development applications that require approval under delegation by Council officers or the Sutherland Shire Local Planning Panel or Sydney South Planning Panel, the planning officer will include in their report the terms of the Planning Agreement offer.

Occasionally, an Applicant will make an offer after a development application has been submitted and there may not be time to draft the accompanying agreement before seeking Council's or the Sydney South Planning Panel's approval of the development application. Where this occurs, it is essential that the Applicant includes the terms of the planning agreement in its letter of offer.

The Manager Strategic Planning will draft a memorandum seeking the Chief Executive Officer's acceptance of the Applicant's offer and approval to provide public notice of the draft planning agreement and explanatory note.

7. Planning Agreements Associated with a Planning Proposal

In order for the council to accept the offer;

- The Planning Agreement Steering Committee must endorse any Major Agreement offer, and
- The Council will commence drafting of the agreement once the Planning Agreement offer has been endorsed by the Planning Agreement Steering Committee.

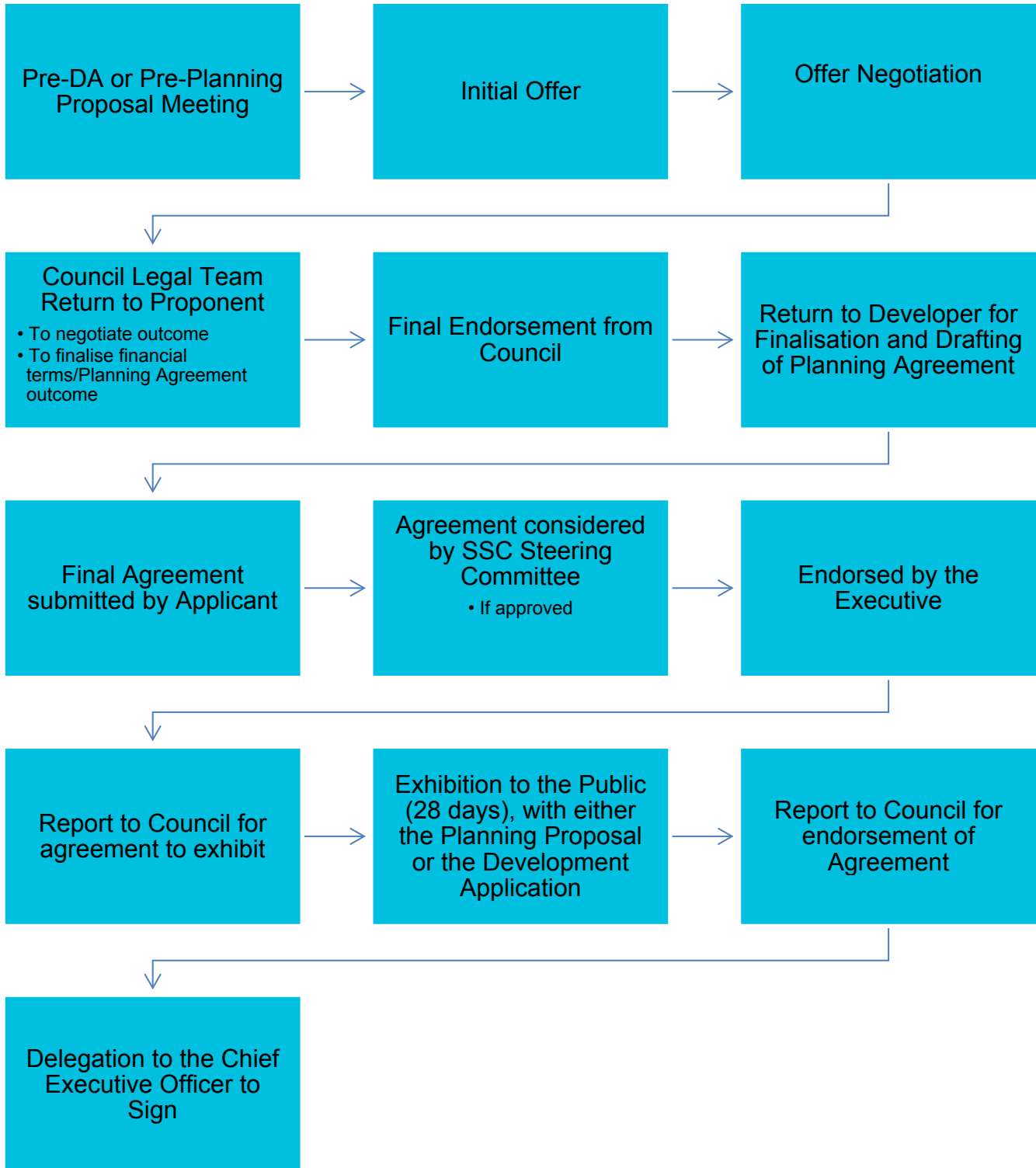
For all planning proposals, the final Planning Agreement offer must be included in the Council Report seeking endorsement by Council for the Planning Proposal to be referred to the Department of Planning (Gateway Determination Request). The planning officer will include in their report to Council the terms of the planning agreement.

Subsequent to the draft Planning Agreement being agreed by the Applicant, approval and execution of the draft planning agreement and the explanatory note and approval to exhibit the documents is to be sought from the Chief Executive Officer by way of delegation from the Council.

8. Public Exhibition Process

Public notification of planning agreements will be as follows;

- Exhibition will take place after the offer is accepted and the draft planning agreement approved by the Chief Executive Officer,
- Documents for public exhibition will be presented in Plain English for members of the public and will include detail of what is being proposed, impacts and benefits,
- The planning agreement will be publically exhibited for at least 28 days in accordance with Section 93G (1) of the EP&A Act, concurrently with either the Planning Proposal or the Development Application,
- Where the planning agreement cannot be exhibited at the same time as the Development application or Planning Proposal, it will be exhibited as soon as possible,
- Any potentially affected parties will be notified in accordance with Council's notification procedures in the Community Participation Plan.
- Exhibition of planning agreements are to include notification on Council's website and providing hard copies on request at the Customer Service Counter of the main administration building of Council for review. Notification to relevant government agencies may also be required.



End of Document

UNCONTROLLED COPY WHEN PRINTED - For up to date copy please refer to Sutherland Shire Council Intranet / Website			
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