



**UNDER SEPARATE COVER
ATTACHMENTS**

**ORDINARY MEETING
13 AUGUST 2024**

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City Planning

EXHIBITION OF DRAFT PLANNING AGREEMENT AND DRAFT WORKS IN KIND/MATERIAL PUBLIC BENEFIT AGREEMENT POLICIES 2024

Draft Voluntary Planning Agreement Policy 2024 (Under Separate Cover)

Meeting Date: 13 August 2024

Attachment No: 1

Number of Pages: 41

Maitland City Council
Planning Agreements Policy 2024

Date Approved:

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Part 1 - Introduction**1 Definitions of terms**

affordable housing has the same meaning as in section 1.4(1) of the EPA Act.

Contributions Plan means a contributions plan approved by the Council under section 7.18 of the EPA Act and in force.

Contributions Plan Category means a category of public amenities or public services specified or described in the works schedule in a Contributions Plan.

Council means Maitland City Council.

Dedication of land includes dedication of:

- (a) land in stratum (whether or not within a building),
- (b) lots in a strata plan,
- (c) interests in land such as but not limited to easements and rights of way.

Department means the NSW Department of Planning and Environment.

developer means person who has:

- (a) sought a change to an environmental planning instrument, or
- (b) made or proposes to make a development application (including a person who has made or proposes to make an application to modify a development consent), or
- (c) entered into an agreement with or is otherwise associated with, a person to whom paragraph (a) or (b) applies.

development application has the same meaning as in section 1.4(1) of the EPA Act

development contribution means the provision made by a developer under a planning agreement being a monetary contribution, the dedication of land free of cost, or the provision of any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

Direction means the *Environmental Planning Assessment (Planning Agreements) Direction 2019* made by the Minister for Planning under section 7.9 of the EPA Act dated 28 February 2019.

EPA Act means the *Environmental Planning and Assessment Act 1979* (NSW).

environmental planning instrument has the same meaning as in the EPA Act.

explanatory note means an explanatory note relating to a planning agreement required by section 205 of the Regulation.

ICAC Audit Tool means the *Development Assessment Internal Audit Tool* published by the Independent Commission Against Corruption dated April 2010 in so far as it applies to planning agreements.

instrument change means the making, amendment or repeal of an environmental planning instrument to which a planning proposal relates.

LEP means *Maitland Local Environmental Plan 2011*.

LGA means local government area.

local infrastructure contribution means a condition of development consent imposed under section 7.11 of the EPA Act requiring the payment of a monetary contribution or the dedication of land free of cost or under section 7.12 requiring the payment of a levy.

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modification application means an application under section 4.55 or 4.56 of the EPA Act to modify a development consent.

Part 6 certificate means a certificate under Part 6 of the EPA Act.

planning agreement - See section 4.

planning proposal has the same meaning as in section 3.33(1) of the EPA Act.

Practice Note means the *Planning Agreements Practice Note - February 2021*, published by the Department of Planning and Environment, a copy of which is available on the NSW Department of Planning and Environment website at www.planning.nsw.gov.au

public includes a section of the public.

public benefit means the benefit enjoyed by the public as a consequence of a development contribution made by a developer under a planning agreement.

public facilities means public infrastructure, facilities, amenities and services.

public purpose has the same meaning as in section 7.4(2) of the EPA Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

surplus value the value of the developer's contribution under a planning agreement for a Contributions Plan Category of facilities less 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 EPA Act for that category in respect of the development the subject of the agreement.

VPA Officer means a Council officer having the function of negotiating a proposed planning agreement on behalf of Council but does not include a person having the function of assessing a planning proposal or a development application or modification application.

Work means the physical result of carrying out a work with respect to land.

2 Purpose

2.1 The purposes of this Policy are:

2.1.1 to set out Maitland City Council's policies and procedures relating to the use of planning agreements under section 7.4 of the *Environmental Planning and Assessment Act 1979*, and

2.1.2 to meet the requirement of the Practice Note for the Council in relation to such a policy.

3 Scope

3.1 This policy applies to any planning agreement that the Council enters into or proposes to enter into that applies to land or development within the Council's local government area.

3.2 This policy also applies to any planning agreement that the Council enters into or proposes to enter into jointly with another council or other planning authority that applies to land outside the Council's local government area.

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4 What is a planning agreement?

- 4.1 For the purposes of this Policy, a planning agreement is a voluntary agreement or other arrangement under Subdivision 2 of Division 7.1 of the EPA Act between a planning authority and a developer, being a person who has:
- 4.1.1 sought a change to an environmental planning instrument; or
 - 4.1.2 made or proposes to make a development application or application for a complying development certificate,
- under which the developer is required to dedicate land free of cost, pay a monetary contribution, provide any other material benefit; or provide any combination of the above, to be used for or applied towards a public purpose¹.
- 4.2 Under the EPA Act, a public purpose relating to a planning agreement includes but is not limited to the following:
- 4.2.1 the provision of (or the recoupment of the cost of providing) public amenities or public services,
 - 4.2.2 the provision of (or the recoupment of the cost of providing) affordable housing,
 - 4.2.3 the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
 - 4.2.4 the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
 - 4.2.5 the monitoring of the planning impacts of development,
 - 4.2.6 the conservation or enhancement of the natural environment².
- 4.3 Competitive tendering under section 55(1) of the *Local Government Act 1993* (NSW) is not feasible before the Council enters into a planning agreement and, for this reason, the Council has resolved that tenders will not be invited before the Council enters into such an agreement.

5 About this Policy

- 5.1 The Practice Note must be considered by the Council when negotiating or entering into a planning agreement³.
- 5.2 The Practice Note strongly encourages all councils to publish policies and procedures concerning their use of planning agreements, which:
- 5.2.1 provide a generally applicable test for determining the acceptability of a planning agreement,
 - 5.2.2 contain specific measures to protect the public interest and prevent misuse of planning agreements,
 - 5.2.3 have published and accessible rules and procedures,
 - 5.2.4 provide for effective formalised public participation,

¹ See section 7.4(1) of the EPA Act.

² See section 7.4(2) of the EPA Act.

³ See section 203(7) of the Regulation.

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- 5.2.5 extend fairness to all parties affected by a planning agreement, and
- 5.2.6 guarantee regulatory independence of the planning authority.
- 5.3 It is intended that this Policy will be periodically reviewed and, depending on the outcome of any review, may be updated from time to time.
- 5.4 This Policy should be read in conjunction with the Practice Note.

6 Legislative and regulatory framework

- 6.1 Division 7.1 of the EPA Act and Division 7.1 of the Regulation establish a statutory scheme for contributions by developers to local councils in connection with development.
- 6.2 The statutory scheme has compulsory and voluntary elements.
- 6.3 The compulsory element contained in Subdivision 3 of Division 7.1 of the EPA Act and Division 2 of Part 9 of the of the Regulation provides for consent to be granted to proposed development subject to a condition requiring local infrastructure contribution in the form of a monetary contribution or levy or the dedication of land free of cost.
- 6.4 Subdivision 2 of Division 7.1 of the EPA Act and Division 1 of Part 9 of the Regulation set out the primary legislative framework for planning agreements.
- 6.5 A planning agreement must provide for the following:
 - 6.5.1 the land to which it applies,
 - 6.5.2 the planning proposal or the development (or both) to which it applies,
 - 6.5.3 details of the nature, manner and timing of the provision of public benefits to be made by the developer under the agreement,
 - 6.5.4 whether the agreement excludes (wholly or in part) or does not exclude the application of sections 7.11, 7.12 or 7.24 of the EPA Act to the development to which it applies,
 - 6.5.5 if the application of section 7.11 is not excluded, whether benefits under the agreement are or are not to be taken into consideration in determining a local infrastructure contribution under section 7.11,
 - 6.5.6 a dispute resolution mechanism,
 - 6.5.7 a suitable means of enforcing the agreement in the event of a breach of the agreement by the developer⁴.
- 6.6 There is no need for any connection between the development to which a planning agreement applies and the object of expenditure of any money paid under the agreement⁵.
- 6.7 A planning agreement may, but is not required to, be registered on the title to the land to which it applies⁶.
- 6.8 The Direction applies to planning agreements providing for affordable housing development contributions.
- 6.9 The Practice Note and the ICAC Audit Tool also form part of the regulatory framework covering planning agreements.

⁴ See section 7.4(3) of the EPA Act.

⁵ See section 7.4(4) of the EPA Act.

⁶ See section 7.6 of the EPA Act.

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EXHIBITION OF DRAFT PLANNING AGREEMENT AND DRAFT WORKS IN KIND/MATERIAL PUBLIC BENEFIT AGREEMENT POLICIES 2024

Draft Works in Kind Policy 2024 (Under Separate Cover)

Meeting Date: 13 August 2024

Attachment No: 2

Number of Pages: 18

City Planning

**DEVELOPMENT APPLICATION 2023/551
TORRENS TITLE SUBDIVISION TO CREATE
THREE HUNDRED AND TWENTY TWO (322)
RESIDENTIAL LOTS, THREE (3)
STORMWATER BASINS AND THREE (3)
PUBLIC RESERVE LOTS, 457 CESSNOCK
ROAD AND 65 REDWOOD DRIVE
GILLIESTON HEIGHTS**

**Assessment Report (Under Separate
Cover)**

Meeting Date: 13 August 2024

Attachment No: 3

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**DEVELOPMENT APPLICATION 2023/551
TORRENS TITLE SUBDIVISION TO CREATE
THREE HUNDRED AND TWENTY TWO (322)
RESIDENTIAL LOTS, THREE (3)
STORMWATER BASINS AND THREE (3)
PUBLIC RESERVE LOTS, 457 CESSNOCK
ROAD AND 65 REDWOOD DRIVE
GILLIESTON HEIGHTS**

**Recommended Conditions of Consent
(Under Separate Cover)**

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Attachment No: 4

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City Planning

APPROVAL OF DEED OF VARIATION TO WORKS IN KIND AGREEMENT - SHARED PATHWAY THORNTON NORTH - ALLAM PROPERTY GROUP & THORNTON WATERS

Draft Deed of Variation (Under Separate Cover)

Meeting Date: 13 August 2024

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City Planning

ADOPTION OF PROPOSED VOLUNTARY PLANNING AGREEMENT - RECREATION FACILITIES - GILLIESTON HEIGHTS SOUTH - WALKER CORPORATION

Voluntary Planning Agreement (Under Separate Cover)

Meeting Date: 13 August 2024

Attachment No: 1

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