



# muswellbrook shire council

## Planning Agreements Policy

Policy No. P10/1

**Assembled by**  
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**Adopted By Council**  
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**Minute No. 317**

# Planning Agreements Policy

## P10/1

### POLICY OBJECTIVES

To set out:

- the circumstances in which Council would ordinarily consider entering into a planning agreement,
- the matters ordinarily covered by a planning agreement,
- the form of development contributions ordinarily sought under a planning agreement,
- the kinds of public benefits ordinarily sought and, in relation to each kind of benefit, whether it involves a planning benefit,
- the method for determining the value of public benefits and whether that method involves standard charging,
- whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate,
- when, how and where public benefits will be provided,
- the procedures for negotiating and entering into planning agreements,
- the planning authority's policies on other matters relating to planning agreements, such as their review and modification, the discharging of the developer's obligations under agreements, the circumstances, if any, in which refunds may be given, dispute resolution and enforcement mechanisms, and the payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

### POLICY STATEMENT

The Muswellbrook Section 94 Contributions Plan 2001 contained a Community Enhancement Plan (CEP) which preceded the commencement of provisions in the EP & A Act for 'Voluntary Planning Agreements' (VPA). These types of agreement work in a similar manner to VPAs, and the Council's section 94A plan includes provisions for VPAs to be proposed by a proponent of a development, which will replace the former CEP program to align with the applicable legislation under the EP & A Act.

A VPA is a voluntary agreement between one or more planning authorities and a person (the *developer*) 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 the provision of public infrastructure or another public purpose.

A public purpose includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,
- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,

- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.

VPA's by proponents are required to satisfy certain acceptability tests to the satisfaction of Council as provided in clause 6 of this policy.

Council cannot require a proponent for a development to enter into a VPA.

This Policy is not legally binding. However it is intended that the Council and all persons dealing with the Council in relation to planning agreements will follow this Policy to the fullest extent possible.

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. The updates may cover additional matters to those covered in this Policy or provide more detailed information or guidance on specific matters covered in this Policy.

## **LEGISLATION**

Environmental Planning & Assessment Act 1979 ("the Act")

Environmental Planning & Assessment Regulation 2000 ("the Regulations")

Muswellbrook Local Environmental Plan 2009 ("the LEP")

Muswellbrook Shire Development Control Plan 2009 ("the DCP")

Muswellbrook Section 94 Contributions Plan 2001

Muswellbrook Shire Section 94A Contributions Plan 2009 ("section 94A plan")

## **PROCEDURE**

### **1. Council's strategic objectives for the use of planning agreements**

The Council's strategic objectives with respect to the use of planning agreements are:

- (a) to provide an enhanced and more flexible development contributions system for the Council,
- (b) to supplement or replace, as appropriate, the application of s94 and s94A of the Act to development,
- (c) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits,
- (d) to allow the community, through the public participation process under the EP & A Act, to gain an understanding as to the redistribution of the costs and benefits of development in order to realise community preferences for the provision of public benefits, and
- (e) to lever planning benefits from development wherever appropriate.
- (f) to adopt innovative and flexible approaches to the provision of infrastructure in a manner that is consistent with relevant controls, policies and circumstances legally recognised as relevant under Section 79C of the EP & A Act.
- (g) to provide or upgrade infrastructure to appropriate levels that reflect and balance environmental standards, community expectations and funding priorities,

- (h) to provide certainty for the community, developers and the Council in respect to infrastructure and development outcomes.

## **2. Principles of planning agreements**

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

- (a) planning decisions may not be bought or sold through planning agreements.
- (b) the Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, the Regulations or any other Act or law.
- (c) the Council will not use planning agreements for any purpose other than a proper planning purpose.
- (d) the Council will not use planning agreements as a means to overcome revenue raising or spending limitations to which it is subject or for other improper purposes.
- (e) development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.
- (f) the Council will not seek benefits under a planning agreement that are unrelated to particular development.
- (g) the Council will not take into consideration planning agreements that are wholly unrelated to the subject matter of the application, nor will the Council give disproportionate weight to a planning agreement.
- (h) the Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement.
- (i) the Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements.
- (j) where the Council has a commercial stake in development the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interests in the development.

## **3. Circumstances in which Council will consider negotiating a planning agreement**

The Council, in its complete discretion, may negotiate a planning agreement with a developer in connection with any proposed application by the developer for an LEP instrument change or for development consent or proposed development applications relating to any land in the Council's area.

## **4. Consideration of planning agreements in relation to instrument changes and development applications**

When exercising its functions under the Act in relation to an application by a developer for an LEP instrument change or a development consent to which a proposed planning agreement relates, the Council will consider to the fullest extent permitted by law:

- (a) whether the proposed planning agreement is relevant to the application and hence may be considered in connection with the application, and

- (b) if so, the proper planning weight to be given to the proposed planning agreement.

## **5. Specific purposes of planning agreements**

The Council may consider negotiating a planning agreement with a developer for a public purpose to:

- (a) meet the demands created by the development for new public infrastructure, amenities and services,
- (b) compensate 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
- (c) address a deficiency in the existing provision of public facilities in the Council's area,
- (d) achieve recurrent funding in respect of public facilities,
- (e) prescribe inclusions in the development that meet specific planning objectives of the Council,
- (f) monitor the planning impacts of development,
- (g) secure planning benefits for the wider community so that the development delivers a net community benefit.

## **6. Acceptability test**

The Council will apply the following test in order to assess the acceptability of the proposed planning agreement:

- (a) is the proposed planning agreement directed towards a proper or legitimate planning purpose ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development and the circumstances of the case?
- (b) does the proposed planning agreement provide for public benefits that bear a relationship to development that is not wholly unrelated to development ?
- (c) will the planning agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest?
- (d) does the proposed planning agreement provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits ?
- (e) does the proposed planning agreement protect the communities reasonable planning expectations and avoid environmental harm?
- (f) does the proposed planning agreement promote the Council's strategic objectives in relation to the use of planning agreements?
- (g) can the proposed planning agreement be taken into consideration in the assessment of the relevant LEP amendment proposal or development application?
- (h) does the proposed planning agreement conform to the fundamental principles governing the council's use of planning agreements?
- (i) are there any relevant circumstances that may operate to preclude the Council from entering into the proposed planning agreement?

## **7. Provisions of planning agreements relating to s94 and s94A**

A planning agreement may wholly or partly exclude the application of s94 or

s94A to development that is the subject of the agreement. This is a matter to be negotiated between the Council and a developer having regard to the circumstances of the case.

However, where the application of s94 or s94A of the Act to development is not excluded by a planning agreement, the Council will generally not agree to a provision allowing benefits under the agreement to be taken into consideration in determining a development contribution under section 94 or 94A of the Act.

## **8. Relationship between planning agreements and LEP Variations**

Any variation to development standards under clause 4.6 of the Muswellbrook Local Environmental Plan 2009 as part of a planning agreement will not be permitted by the Council unless the Council is of the opinion that the proposed planning agreement addresses the matters specifically required to be addressed under that clause in relation to the dispensation sought.

## **9. Form of development contributions under a planning agreement**

The form of a development contribution to be made under a proposed planning agreement will be determined by the particulars of the instrument change or development application to which the proposed planning agreement relates.

## **10. Standardising contributions**

Wherever possible, the Council will seek to standardise development contributions sought under planning agreements in order to streamline negotiations and provide fairness, predictability and certainty for developers. This, however, does not prevent public benefits being negotiated on a case by case basis, particularly where planning benefits are also involved.

## **11. Examples of public benefits that may be provided under a planning agreement**

Clause 6 above sets out the acceptability tests for assessing whether planning obligations are appropriate in planning terms. These matters have been taken into account when compiling the public benefits that might be sought set out in the Table below.

<b>Type of benefit</b>	<b>Relevant development types</b>
Local community facilities (eg. education, community health and well being, child care provision, civic improvements)	Residential developments would be relevant to any of these facilities, while commercial or industrial developments are relevant to the provision of childcare and civic improvements.
The environment (eg. compensation for loss or damage, monitoring impacts of development)	Developments that have a negative impact on the environment either in construction or ongoing land use are relevant to these types of contribution.
Transport improvements (eg. intersection upgrades, roadway expansion or pavement reconstruction, cycleways and	Any form of development that generates additional population potential or traffic movements could make a contribution to this type of facility improvement located remotely from a development

signposting)	site, where the facility is not directly attributable or required to adequately service a development (such requirements would be imposed as conditions of consent). Generators of heavy vehicular traffic such as industry in particular are relevant to local transport improvements.
Provision of planning benefits to the wider community (eg. affordable or seniors housing, economic development programs, training and skills provision)	Residential developments are relevant to affordable or seniors housing, while commercial, retail or industrial development are relevant to economic or skills development.

The provisions of the EP & A Act and Regulations may make provisions that limit the application of Planning Agreements to the provision of defined “key community infrastructure”, and proponents and Council must have regard to any such requirements in negotiating planning agreements.

While the Council will endeavour to standardise development contributions sought under planning agreements, this will not always be possible. However, the Council considers that it is helpful for developers to know the Council’s general priorities for planning obligation negotiations. Therefore the Table indicates the main types of benefits that the Council will consider and their relative importance.

Council prefers the collection of funding through a planning agreement as it provides additional funding and allows greater flexibility for the allocation of the spending of the funds.

Appendix A to this policy provides an outline of the potential planning benefits and Council will maintain a list of suitable projects which could benefit. It is also recognised that the planning benefits actually proposed may differ from the examples given in the table or the facilities in Appendix A because negotiations for each proposed development will reflect the circumstances of each case and the needs created by the scale of proposed change.

Therefore, other benefits which are not identified specifically above may also be relevant, however, the approval of the Minister for Planning may be required for certain provisions in planning agreements that are not defined as “key community infrastructure”.

Consequently, the lists do not prevent public benefits being negotiated on a case by case basis, particularly where planning benefits are also involved.

## 12. Recurrent charges

The Council may request developers, through a planning agreement, to make development contributions towards the recurrent costs of public facilities.

Where the public facility primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity. However, where the public facility or public benefit is intended to serve the wider community, 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.

**13. Pooling of monetary contributions**

Where a proposed planning agreement provides for a monetary contribution by the developer, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements or co-funded by Council and applied progressively for the different purposes under those agreements, subject to the specific requirements of the relevant agreements.

Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

**14. Credits and refunds**

The Council will not agree to a planning agreement providing for the surplus value under a planning agreement being refunded to the developer or offset against development contributions required to be made by the developer in respect of other development in the Council's area.

**15. Monitoring and review of a planning agreement**

The Council will continuously monitor the performance of the developer's obligations under a planning agreement.

The 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 of the agreement.

The Council will require the planning agreement to contain a provision requiring the parties to use their best endeavours to agree on a modification to the agreement having regard to the outcomes of the review.

**16. Modification or discharge of the developer's obligations under a planning agreement**

The Council may agree to a provision in a planning agreement permitting the Developer's obligations under the agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- (a) the developer's obligations have been fully carried in accordance with the agreement,
- (b) the developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become bound to the Council to perform the developer's obligations under the agreement,
- (c) the development consent to which the agreement relates has lapsed,
- (d) there has been a material modification to the development consent to which the agreement relates,
- (e) the performance of the planning agreement has been frustrated by an event beyond the control of the parties,
- (f) the Council and the developer otherwise agree to the modification or discharge of the agreement,
- (g) material changes have been made to the planning controls applying to the land to which the agreement applies,

- (h) the revocation or modification by the Minister for Planning of a development consent to which an agreement relates.

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

**17. Costs of negotiating, preparing and monitoring a planning agreement**

The Council will generally require a planning agreement to make provision for payment by the developer of the Council's costs of negotiating, preparing, and executing a planning agreement, as well as monitoring, enforcing and administering the agreement.

**18. Method for valuing the public benefits under a planning agreement**

Unless otherwise agreed: Where the benefit under a planning agreement is the provision of land for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated amount of compensation to which the developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land.

Unless otherwise agreed: Where the benefit under a planning agreement is the carrying out of works for a public purpose, the Council will generally seek to value the benefit on the basis of the estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.

Where the benefit under a planning agreement is the provision of a material public benefit, the Council and the developer will negotiate the manner in which the benefit is to be valued for the purposes of the agreement.

**19. Time when developer's obligations arise under a planning agreement**

The Council will generally require a planning agreement to provide that the developer's obligations under the agreement take effect when the first development consent operates or prior to be acted on in respect of development that is the subject of the agreement.

**20. Implementation agreements**

In appropriate cases, the council may require a planning agreement to provide that before the development the subject of the agreement is commenced, the parties are to enter into an *implementation agreement* that provides for matters such as:

- (a) the times at which and, if relevant, the period during which, the developer is to make provision under the planning agreement,
- (b) the design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer,
- (c) the manner in which a work is to be handed over to the Council,
- (d) the manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement.

**21. Assignment and dealings by the developer**

The Council will require every planning agreement to provide that the developer may not assign its rights or obligations under the planning agreement nor have any dealing in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:

- (a) the developer has, at no cost to the Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of the Council by which that person agrees to be bound by the planning agreement as if they were a party to the original agreement, and
- (b) the Developer is not in breach of the agreement.

## **22. Preparation and Documentation of the planning agreement**

The Council will ordinarily arrange for the preparation of a planning agreement relating to a particular application for an instrument change or development consent at the cost of the proponent.

## **23. Standard Form for planning agreements**

The Council uses a standard form of planning agreement on which every planning agreement is based. That document reflects the policies and procedures set out in this Policy, and will be made available upon request.

## **24. Council's Annual Report and Register**

The EP & A Act requires that where Council has entered into a planning agreement, while the planning agreement is in force, that Council must include in its annual report particulars of compliance with and the effect of the planning agreement during the year to which the annual report relates.

Council is to keep a register of any planning agreements that apply to land within the Council's area, whether or not the Council is a party to a planning agreement.

The Council is required to record in the register the date an agreement was entered into and a short description of the agreement (including any amendment).

The Council will make the following available for public inspection (free of charge) during ordinary office hours:

- (a) the planning agreement register kept by the Council,
- (b) copies of all planning agreements (including amendments) that apply to the area of the Council,
- (c) copies of the explanatory notes relating to those agreements or amendments.

## **25. Provision of security under a planning agreement**

The Council may require a planning agreement to make provision for security by the developer of 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 the Council to the full value of the developer's provision under the agreement and on terms otherwise acceptable to the Council.

**26. Dispute resolution**

The Council will require a planning agreement to 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.

**27. Hand-over of works**

The Council will generally not accept the hand-over of a public work carried out under a planning agreement unless the developer furnishes to the Council a certificate to the effect that the work has been carried out and completed in accordance with the agreement and any applicable development consent.

The Council will also require the agreement to provide for a defects liability period during which any defects must be rectified at the developer's expense.

## **28. Management of land or works after hand-over**

If a planning agreement provides for the developer, at the developer's cost, to manage or maintain land that has been dedicated to the Council or works that have been handed-over to the Council, the Council will generally require the parties to enter into a separate implementation agreement in that regard (see clause 19 of this Policy).

The failure of the parties to reach agreement in relation to management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the planning agreement.

## **29. Public use of privately-owned facilities**

If a planning agreement provides for the developer to make a privately-owned facility available for public use, the Council will generally require the parties to enter into a separate implementation agreement in that regard (see clause 19 of this Policy).

Such an agreement may, subject to the Council's agreement, provide for payment to the developer of a reasonable fee by a member of the public who desires to use the relevant facility.

The failure of the parties to reach agreement in relation to management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the planning agreement.

## **30. Notations on Certificates under s149(5) of the Act**

The Council will generally require a planning agreement to contain an acknowledgement by the developer that the Council may, in its absolute discretion, make a notation under s149(5) of the Act about a planning agreement on any certificate issued under s149(2) of the Act relating to the land the subject of the agreement or any other land.

# Negotiation Procedures

This section outlines the basic procedures for the negotiation of planning agreements.

## **31. Negotiation System**

The Council's negotiation system for planning agreements aims to be efficient, predictable, transparent and accountable.

The system seeks to ensure that the negotiation of planning agreements runs in parallel with applications for instrument changes or development applications.

As planning agreements are required by the Act to be publicly exhibited, a planning agreement must be negotiated and prepared prior to it being publicly exhibited.

The Council prefers that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement. This will enable the application and the planning agreement to be exhibited concurrently and reduce delays resulting from complying with multiple notification requirements.

Alternatively, a proponent of a development may negotiate an offer of a Voluntary Planning Agreement with Council prior to the lodgement of an application, and include the offer with the development application documents lodged with Council. The terms of an offer must contain sufficient particulars to address the following requirements:

- a) The financial commitment(s) or provision of infrastructure or services on the part of the developer;
- b) The obligations that would be imposed upon Council, including the likely initial or recurrent costs arising from Council entering into the agreement;
- c) The provisions in place for the negotiation, costs, and timing for the preparation of the planning agreement instrument and its implementation prior to commencement of the development;
- d) Any details under this policy or legislation relevant to the proposed planning agreement;
- e) Any other details that will assist in determining the public benefits arising from the planning agreement.

### **32. Who will negotiate a planning agreement on behalf of the Council**

A Council officer(s) with appropriate delegated authority will negotiate a planning agreement on behalf of the Council.

The councillors will not be involved in the face to face negotiation of the agreement.

### **33. Separation of the Council's planning assessment and negotiation roles**

If the Council has a commercial interest in the subject matter of a planning agreement as a landowner, developer or financier, the Council will ensure that the person who assesses the application to which a planning agreement relates is not the same person or a subordinate of the person who negotiated the terms of the planning agreement on behalf of the Council in its capacity as landowner, developer or financier.

### **34. Involvement of independent third parties in the negotiation process**

The Council will encourage the appointment of an independent person to facilitate or participate in the negotiations or aspects of it, particularly where:

- (a) an independent assessment of a proposed change to an environmental planning instrument or development application is necessary or desirable,
- (b) factual information requires validation in the course of negotiations,
- (c) sensitive financial or other confidential information must be verified or established in the course of negotiations,
- (d) facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved,
- (e) dispute resolution is required under a planning agreement.

The costs of the independent person will be borne by the proponent.

### **35. Negotiation process**

Before the lodgement of the relevant application by the developer, the Council and the developer will decide whether to negotiate a planning agreement. The parties should consider whether other planning authorities and other persons associated with the developer should be additional parties to the agreement.

If the developer is not the owner of the relevant land, the landowner should be an additional party to the agreement.

After the parties have decided to negotiate a planning agreement, the negotiation of that agreement will generally involve the following key steps:

- (a) the parties will then appoint a person to represent them in the negotiations
- (b) the parties will also appoint a third person to attend and take minutes of all negotiations
- (c) the parties will also decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it
- (d) the parties will also agree on a timetable for negotiations and the protocols and work practices governing their negotiations
- (e) the parties will then identify the key issues for negotiation and undertake the negotiations
- (f) if agreement is reached, the Council will prepare the proposed planning agreement and provide a copy of it to the developer. This will include an explanatory note, as required by the Regulation
- (g) the parties will undertake further negotiation on the specific terms of the proposed planning agreement and explanatory note
- (h) once agreement is reached on the terms of the proposed planning agreement, the developer will be required to execute the agreement.
- (i) the developer may then make the relevant application to the Council accompanied by a copy of the agreement and explanatory note. The application must clearly record that the developers offer is made on the basis that the planning agreement will apply if application is approved.
- (j) the parties may be required to undertake further negotiations and, hence, a number of the above steps, as a result of the public notification and inspection of the planning agreement or its formal consideration by the Council in connection with the relevant application, may need to be repeated including publicly renotifying the agreement.

Alternatively, If the applicant proposes to make an offer to enter into a planning agreement, the process above will be paused at item (f) to enable the determination of any relevant application, and the requirement to enter into the agreement will be imposed as a condition of consent. Prior to commencement of the development, steps will proceed from item (f) to completion of the planning agreement.

Relevant public authorities will generally be consulted in relation to the application and planning agreement during the process outlined in this policy, and any consequential amendments may be required to the application and proposed planning agreement as a consequence of those consultations.



# Public Notification & Exhibition of Planning Agreements

## **36. Public notification of planning agreements**

A planning agreement must be publicly notified and available for public inspection for a minimum of 28 days.

Where the application to which a planning agreement relates is required by or under the Act or Regulation to be publicly notified and available for public inspection for a period exceeding 28 days, the Council will publicly notify the planning agreement and make it available for public inspection for that longer period.

The development application or the application for the instrument change, proposed planning agreement and explanatory note are to be publicly exhibited in accordance with the *Act* and *Regulation*.

The Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in the 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 the Council, or for any other reason.

## **37. Consideration of a planning agreement**

A proposed planning agreement and public submissions made in relation to that agreement will be considered in the determination of the relevant application for an instrument change or for development consent, so far as relevant to the application.

The weight given to the proposed planning agreement and public submissions made in relation to that agreement is a matter for the Council acting reasonably.

# Implementation of Planning Agreements

## **38. Entering into a planning agreement**

A planning agreement is entered into when it is signed by all of the parties.

A planning agreement can be entered into at any time after the agreement is publicly notified in accordance with the Act and Regulation.

If the application is for an instrument change, and that application is approved, the planning agreement may be entered into immediately upon approval. Alternatively, it can be entered into if consent is subsequently granted to a development application relating to the instrument change.

If the application is an application for development consent, the Council will generally require the planning agreement to be entered into as a condition of granting development consent to the development to which the agreement relates. In such a case, a condition of consent may be imposed which is

generally in a standard form, but only in terms of the developer's offer made in connection with the application.

If the application for development consent is approved on terms different to the developer's offer, the planning agreement could not be required to be entered.

### **39. Registration of planning agreements**

Section 93H of the Act permits a planning agreement (including where an agreement is amended) to be registered on the title to land if each person with an estate or interest in the land agrees to its registration.

Section 93H(3) provides that a planning agreement that has been registered on the title to land under s93H is binding on, and enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement.

The Council will generally 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.

## Appendix A Public benefits for Planning Agreements

### Possible benefits

The following is a list of possible benefits that Council may consider for planning agreements. They are not exhaustive and developers or industry are encouraged to discuss these or other benefits that may be included in a planning agreement.

Possible benefits to be listed in this schedule must have consideration to generation of recurrent costs and how these costs will be funded. Certain projects that do not fit within the definition of “key community infrastructure” may require Ministerial approval before being placed on this list. If recurrent or operating costs are to be borne by Council or the community, a business plan must be developed in conjunction with the proposed planning agreement to address recurrent cost allocation, and may also require Ministerial approval.

### Local community facilities (eg. education, community health and well being, child care provision and civic improvements)

- Muswellbrook CBD Improvements

### The environment (eg. compensation for loss or damage to the environment, monitoring the impacts of development, planning for environmental management)

### Transport Improvements

### Provision of planning benefits to the wider community (eg. affordable housing, training and skills provision)

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#### Date

4 August 2009

#### REVIEW HISTORY:

	<i>Current</i>	<i>Previous</i>	<i>Prior</i>	<i>Prior</i>
<b>Minute No:</b>				
<b>Meeting Date:</b>				
<b>Review Date:</b>				
<b>Rescind Date:</b>				