

## POLICY

<b>Policy name</b>	Planning Agreements
<b>Responsible manager(s)</b>	Divisional Manager, Strategic Services
<b>Contact officer(s)</b>	Coordinator, Land Use Planning
<b>Directorate</b>	Planning and Sustainability Services
<b>Approval date</b>	10 September 2013

### Purpose

The Planning Agreement Policy sets out Council’s framework to negotiate the provision of public infrastructure, facilities and services.

The purposes of this Policy are to:

- Establish a framework governing the use of planning agreements by Council;
- to ensure the framework so established is efficient, fair, transparent and accountable;
- Enhance planning flexibility in Council's area through the use of planning agreements;
- Enhance the range and extent of development contributions made by development towards public facilities in Council's area; and
- Set out Council's specific policies on the use of planning agreements.

### Policy statement

<b>1</b>	<p><b>Application</b></p> <p>This policy applies to planning agreements made or proposed to be made pursuant to Section 93F of the <a href="#">Environmental Planning and Assessment Act 1979</a>.</p>
<b>2</b>	<p><b>Legislation</b></p> <p>This policy sets out Council's policy relating to planning agreements under s93F of the <a href="#">Environmental Planning and Assessment Act 1979</a> (the Act) and the <a href="#">Environmental Planning and Assessment Regulation 2000</a> (the Regulation).</p>
<b>3</b>	<p><b>Framework</b></p> <p>Council's planning agreements framework consists of the following:</p> <ol style="list-style-type: none"> <li>a) the provisions of Subdivision 2 of Division 6 of Part 4 of the Act;</li> <li>b) the provisions of Division 1A of Part 4 of the Regulation;</li> <li>c) this policy; and</li> <li>d) the Planning Agreements Code of Practice.</li> </ol>
<b>4</b>	<p><b>Objectives</b></p> <p>Council's strategic objectives for the use of planning agreements include:</p> <ol style="list-style-type: none"> <li>a) to provide an enhanced and more flexible development contributions system for Eurobodalla Shire;</li> <li>b) more particularly, to supplement or replace, as appropriate, the application to development of s94 and s94A of the Act;</li> <li>c) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits;</li> <li>d) to allow the community, through the public participation process under the Act, to agree to the redistribution of the costs and benefits of development in order to</li> </ol>

	<p>realise community preferences for the provision of public benefits;</p> <p>e) to adopt innovative and flexible approaches to the provision of infrastructure in a manner consistent with Council's adopted management plan;</p> <p>f) to provide or upgrade infrastructure to appropriate levels that reflect and balance environmental standards, community expectations and funding priorities;</p> <p>g) to provide certainty for the community, developers and Council in respect of infrastructure and development outcomes; and</p> <p><b>h)</b> to facilitate the provision of particular public facilities and other public benefits in connection with the development of priority sites nominated as such as in any structure plan made by Council.</p>
<b>5</b>	<p><b>Circumstances in which Council will consider negotiating a planning agreement</b></p> <p>Council, at its discretion, may negotiate a planning agreement with a developer in connection with any application by the developer for an amendment to an environmental planning instrument (EPI) or for development consent relating to any land in Council's area.</p> <p>Council may consider negotiating a planning agreement with a developer to:</p> <p>a) 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;</p> <p>b) meet the demands created by the development for new public infrastructure, amenities and services;</p> <p>c) address a deficiency in the existing provision of public facilities in Council's area;</p> <p>d) achieve recurrent funding in respect of public facilities;</p> <p>e) prescribe inclusions in the development that meet specific planning objectives of Council;</p> <p>f) monitor the planning impacts of development; and</p> <p>g) secure planning benefits for the wider community</p> <p>Council will consider the Acceptability test in the code when determining the desirability of a proposed planning agreement.</p>
<b>6</b>	<p><b>Application of s94 and s94A to development to which a planning agreement relates</b></p> <p>Council has no general policy on whether a planning agreement should exclude the application of s94 or s94A of the Act to development to which the agreement relates. This is a matter for negotiation between Council and a developer having regard to the particular circumstances of the case.</p> <p>However, where the application of s94 of the Act to development is not excluded by a planning agreement, Council will decide on a case by case basis whether it will allow benefits under the planning agreement to be taken into consideration in determining a development contribution under s94.</p>
<b>7</b>	<p><b>Form of development contributions under a planning agreement</b></p> <p>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.</p>

## Implementation

Requirements		Responsibility
1	<p><b>Code of Practice</b></p> <p>This policy will be implemented by following Council's Planning Agreements Code of Practice, which specifies in detail the procedures and matters to be considered.</p>	Divisional Manager, Strategic Services
2	<p><b>Staff</b></p> <p>Under supervision, applicable Council staff will be responsible for ensuring that policies are implemented appropriately within their work area, after they have received relevant training to do so.</p>	Land Use Planning Coordinator, Development Assessment Coordinator
3	<p><b>Concerns</b></p> <p>Concerns received regarding this policy will be recorded on council's Customer Service Request (CSR) or records system and handled in accordance with council's Customer Service Policy. They will be used to analyse the history of concerns and to help determine follow up actions.</p>	Council Officers
4	<p><b>Complaints</b></p> <p>Complaints received regarding this policy will be lodged with the Public Officer and handled in accordance with council's Complaints Policy.</p>	Public Officer
5	<p><b>Consultation</b></p> <p>The policy is compliant with the Environmental Planning and Assessment Act 1979 and therefore no consultation with any external body is required.</p>	As applicable

## Review

The policy will be automatically revoked at the expiration of twelve months after the declaration of the poll for the next general NSW local government election, unless Council revokes it sooner. **Note:** *Automatic revocation of the policy is provided for by section 165(4) of the Local Government Act 1993. The next general local government election is expected to be held in September 2016.*

This policy may also be reviewed and updated as necessary if legislation requires it; or when Council's functions, structure or activities change; or when technological advances or new systems change the way that Council manages Planning Agreements. Reviews of the effectiveness of this policy could include the following:

Performance indicator	Data source(s)
Concerns, Complaints and Customer Feedback Survey Responses	Council records
Internal or external audit	Audit

## Governance

This policy should be read in conjunction with any related legislation, codes of practice, relevant internal policies, and guidelines.

*Related legislation and policies*

Name	Link
Code of Practice	<a href="http://www.esc.nsw.gov.au/site/Publications/Strategies/PolicyReg/ViewCodes.aspx">www.esc.nsw.gov.au/site/Publications/Strategies/PolicyReg/ViewCodes.aspx</a>
Local Government Act 1993	<a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/">www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182/</a>
Environmental Planning and Assessment Act 1979	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/act+203+1979+cd+0+N">www.legislation.nsw.gov.au/maintop/view/inforce/act+203+1979+cd+0+N</a>
Environmental Planning and Assessment Regulation 2000	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+557+2000+cd+0+N">www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+557+2000+cd+0+N</a>
Land Acquisition (Just Terms Compensation) Act 1991	<a href="http://www.legislation.nsw.gov.au/maintop/view/inforce/act+22+1991+cd+0+N">www.legislation.nsw.gov.au/maintop/view/inforce/act+22+1991+cd+0+N</a>
Development Contributions Practice notes – July 2005	<a href="http://www.planning.nsw.gov.au/planningsystem/pdf/all_contribution_pns.pdf">www.planning.nsw.gov.au/planningsystem/pdf/all_contribution_pns.pdf</a>

*Related external references*

Name	Link
Division of Local Government	<a href="http://www.dlg.nsw.gov.au/">www.dlg.nsw.gov.au/</a>
Department of Planning and Infrastructure	<a href="http://www.planning.nsw.gov.au/">www.planning.nsw.gov.au/</a>

*Definitions*

Other than the terms defined below, terms used in this policy and its associated code of practice have the meanings found in the Acts listed above

Word/ Term	Definition
<i>surplus value</i>	the value of the developer's provision under a planning agreement less the sum of the value of public works required to be carried out by the developer under a condition imposed under s80A(1) of the Act and the value of development contributions that are or could have been required to be made under s94 or s94A of the Act in respect of the development the subject of the agreement.

*Change history*

Version	Approval date	Approved by	Min No	File No	Change
1	19 Dec 2006	Council			Policy commenced
2	22 Sep 2009	Council	09/291	E09.3418	Policy retained (report G09-99)
3	10 Sep 2013	Council	13/272	E13.7095	Updated to new Policy Template, updated review date, updated references and links

*Internal use*

Responsible officer	Director Planning Sustainability Services		Approved by	Council	
Min No	13/272	Report no	O13/56	Effective date	10 Sep 2013
File No	E13.7095	Review date	Sep 2016	Pages	4