



Willoughby Planning Agreement Policy

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| Review Date: | - |
| Version: | 1 |
| Responsible Positions: | Planning Manager, Planning & Infrastructure Development Contributions Officer |
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1. PURPOSE

This policy's purpose is to detail how Willoughby City Council will interact with developers of land in the LGA who offer to provide development contributions through Planning Agreements.

This policy sets out:

- The different types of agreements that may be offered and which the Council will consider
- Requirements for agreements
- The negotiation, execution and implementation process for agreements
- Council's preferred agreement terms, that will be contained in a Template Planning Agreement document.

This policy is not legally binding. It is intended to provide a guide for Council officers and all persons dealing with Council concerning Planning Agreements.

Requirements set out in this policy complement the statutory framework for Planning Agreements (i.e. Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* and Division 1 of Part 9 of the *Environmental Planning and Assessment Regulation 2021*.)

Aims of the Policy

Council aims for this policy to achieve the following:

- Establish a consistent and transparent process for Council and developers to enter into agreements that meet contemporary probity standards.
- Facilitate the timely delivery of infrastructure that is generated by, or in some way related to, development.
- Ensure that all parties to proposed agreements are treated consistently in the negotiation and execution of agreements.
- Where possible and reasonable, work with developers to achieve infrastructure and public benefits for the community which go beyond meeting the impacts generated by their developments.
- Raise public confidence in the Council's use of Planning Agreements as a tool for delivery of infrastructure in the LGA.
- Allow developers to directly provide urban infrastructure as part of their developments where this is in the public interest and the infrastructure delivered achieves a net community benefit.
- Minimise Council's financial risk of providing infrastructure through setting out the conditions upon which a developer can deliver that infrastructure instead of the Council.
- Provide for flexibility to achieve innovative and tailored development outcomes and public benefits to meet the future infrastructure needs of the LGA including spreading the costs and benefits of development.
- Provide specific guidelines on how developers may participate in the Community Infrastructure Scheme that applies to land in the Chatswood CBD.
- Facilitate the provision of public facilities, services and amenities, including the provision of public benefits by developers out of sequence with Council's broader strategic planning processes.

2. CITY STRATEGY OUTCOME

- 5.1 – Be honest, transparent and accountable in all that we do
- 5.3 – Balance the creation of new public assets with the upgrade of existing public assets

3. APPLICATION

This Policy applies to:

- all Planning Agreements proposed or entered into by Council
- all land within the Willoughby Local Government Area (LGA) including any land owned by the Council
- any land outside the LGA in the case of a joint Planning Agreement between Council and another council or planning authority and this Policy shall prevail to the extent of any inconsistency with such other policies as may otherwise apply in those circumstances
- situations where the developer (or any person) is seeking a change to an Environmental Planning Instrument (i.e. to make a change to *Willoughby Local Environmental Plan 2012* ('WLEP 2012') via a Planning Proposal), or proposing to make an application via Development Application ('DA') or Complying Development Certificate ('CDC').

4. POLICY PRINCIPLES

Council's use of Planning Agreements will be governed by the following principles:

- Planning decisions will not be bought or sold through Planning Agreements.
- The consideration, negotiation and assessment of a Planning Agreement will, to the extent reasonably practicable and as required by law, be separated from the consideration of the planning merits of a DA or a planning proposal.
- 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.
- When considering a planning proposal or development application Council will not give undue weight to a Planning Agreement.
- Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed Planning Agreement.
- Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under Planning Agreements.
- Council prefers benefits under a Planning Agreement to have some broad public benefit in relationship to particular development or the locality of the development, unless the benefits aligns to Council's corporate strategic documents, existing contributions plans or other infrastructure delivery documents adopted by Council.

Council will seek to negotiate the provision of the following through Planning Agreements:

- Public purposes that support the strategies and actions in its Local Strategic Planning Statement, Community Strategic Plan, Local Environmental Plans, Development Control Plans, and other land use plans and policies
- Contributions of land, money or works that are required under s7.11 / s7.12 contributions plans, but the developer wishes to modify the location, staging or specification of local infrastructure included in those plans

- Community Infrastructure provision in the Chatswood CBD (refer to chapter 5)
- Conservation of areas with high ecological value.
- Council may also consider offers to provide land, works or monetary contributions for public purposes other than those listed above, where the offer provides better planning outcomes than the sole use of s7.11 or s7.12 contributions.
- Council may also request developers through a Planning Agreement to make contributions towards the recurrent operation and maintenance costs of public facilities or to maintain infrastructure delivered for a certain period of time after handover. The amount of any recurrent funding contribution sought will depend on the type and value of facilities being handed over and the costs to maintain and operate the facility over its life cycle.

5. POLICY STATEMENT

Council is committed to supporting the growing population of the Willoughby LGA and meeting the demands of infrastructure and servicing requirements resulting from development growth by providing high quality public amenities and services.

Authorised by the *EP&A Act*, Council's commitment relies on having access to offers which are of public benefits made under planning agreements to ensure there is adequate funding to deliver the infrastructure works covered under Council's *Delivery Program and Operational Plan*.

6. RESPONSIBLE OFFICER

The Policy is the responsibility of the Planning Manager, Planning & Infrastructure, his / her function in relation to this Policy is:

- point of contact about the application of this Policy
- education, communication and training of staff
- periodical review of this Policy and consultation with the Executive Leadership Team

7. MONITORING AND REVIEW

Council's Development Contributions Officer, or an officer nominated by the Director – Planning and Infrastructure, shall be responsible for administering this Policy and will be responsible for the following:

- Administration, implementation and management of planning agreements in accordance with *EP&A Act* and *Regulations*
- Maintaining and monitoring records of offers made under planning agreements
- Reporting
- Point of contact about the meaning and application of this Policy.
- Review process – as required

8. SUPPORTING INFORMATION

Community Infrastructure Contributions in Chatswood CBD

Community Infrastructure Contribution (CIC) applies to proponents seeking approval for additional GFA on land in the Chatswood CBD as set out in the Chatswood CBD Strategy.

The main elements of the CIC are as follows:

- Site-specific planning proposal to amend the LEP on land where this policy applies for development including additional floor space and the provision of Community Infrastructure
- The costs of providing community infrastructure works
- Planning agreement to secure the provision of Community Infrastructure
- Provision of the Community Infrastructure
- Overall cost of community infrastructure and equity in distributing this cost across all developments that would result in increased density.

Council uses a contribution rate to establish the value of the additional floor space and the Community Infrastructure needed.

CIC is calculated as the difference between the following:

- the total residential accommodation floor space proposed under the additional FSR control sought through the site-specific planning proposal, and
- residential accommodation floor space achievable under the existing maximum FSR control allowed under Willoughby LEP 2012; **or** the existing residential accommodation floor area of the built-form already on site, whichever is greater

The rate is **\$900 per m² of additional floor space**

The CIC \$/m² rate does not apply to sole commercial development in the CBD.

However, for sole commercial development within Chatswood CBD or other parts of Willoughby local government area, other forms of public benefits rather than the \$/m² rate would be encouraged to be provided and negotiated under a Planning Agreement.

In simple terms, the CIC is calculated:

$$\text{\$CIC}_{\text{Amount}} = \text{\$CIC}_{\text{Rate}} \times \text{Additional GFA}$$

\\$CIC Amount is the contribution amount in dollars

\\$CIC Rate is the contribution rate in dollars per m²

Additional GFA is the additional GFA proposed for the site

For clarity, the CIC area calculation excludes:

- the % of the Affordable Housing floor area that applies at the time of drafting the Planning Agreement; and
- the commercial floor area required as part of a mixed-used development

Governing laws and standards

Local Government Act 1993 (NSW)
Local Government (General) Regulation 2005 (NSW)
Environmental Planning and Assessment Act 1979 (NSW)
Environmental Planning and Assessment Regulations 2021 (NSW)

Related policies and other documents

Department of Planning & Environment's Planning Agreement Practice Note - February 2021
Willoughby City Strategy 2013-2029
Willoughby City Council – Delivery Program and Operational Plan
Willoughby Local Environmental Plan 2012
Chatswood CBD Planning and Urban Design Strategy to 2036
Planning Agreements Policy - Procedures Manual

Definitions

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| CC | Construction Certificate |
| Chatswood CBD | Chatswood Central Business District |
| CDC | Complying Development Certificate |
| Chatswood CBD Strategy | Chatswood CBD Planning and Urban Design Strategy to 2036 |
| Community Infrastructure Contribution (or CIC) | a contribution of money towards the provision of works referred to in section 5.4 (such as Table 5-1) of the Policy's <i>Procedures Manual</i> |
| Community Infrastructure | the civil infrastructure, public domain and physical facilities that is required to support the higher intensity of land use and built environment permitted on certain land in the Chatswood CBD where this policy applies. Community Infrastructure may also benefit the wider resident, worker and visitor population. |
| Contributions Plan | a plan made by a council or councils for the purpose of imposing conditions under s7.11 or s7.12 of the EP&A Act |
| Council | means Willoughby City Council. |
| DA | Development Application has the same meaning as in the Act. |
| Developer | Company / person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (s7.4 (11)), 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 Contribution | means the kind of 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. |
| EP&A Act (Act) | <i>Environmental Planning and Assessment Act 1979</i> |
| EP&A Regulation (Regulations) | <i>Environmental Planning and Assessment Regulation 2021</i> |
| FSR (Floor Space Ratio) | has the meaning given in the Willoughby Local Environment Plan (2012), or any replacement environmental planning instrument, or any other planning instrument applicable in the City of Willoughby LGA and applies to the land the subject of the planning proposal. |
| LGA | Local Government Area |
| Material public benefit | a development contribution other than the dedication of land or the payment of cash |
| Planning Agreement | has the meaning given in Section 7.4 (1) of the Act and is an arrangement between a developer or developers (and land owner(s) if the developer(s) does not own the land) and one or more councils and/or other planning authorities, where the |

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| | <p>developer seeks to dedicate land free of cost, pay a monetary contribution, deliver work or provide any other material public benefit, to meet the infrastructure demands of their proposal. Planning Agreements can be offered in connection to any of the following:</p> <ul style="list-style-type: none"> ▪ a planning proposal to change the planning controls applying to land ▪ a development application for consent to carry out development ▪ the modification of a development consent ▪ an application for a complying development certificate. <p>Planning Agreements may address purposes and contributions included in a contributions plan that has been adopted by the Council. They may also address other purposes and contributions that have a wider public benefit.</p> |
| Planning Proposal | has the meaning given in Section 3.33 of the Act. |
| Practice Note | means the <i>Planning Agreements - Practice Note</i> published by the Department of Planning, Industry and Infrastructure in February 2021 |
| Public benefit | is the benefit enjoyed by the public as a consequence of a development contribution |
| public facilities | mean public infrastructure, facilities, amenities and services. |
| Public purpose | <p>includes the purposes listed in Section 7.4 (2) of the Act (without limitation):</p> <ul style="list-style-type: none"> ▪ the provision of (or the recoupment of the cost of providing) public amenities or public services, ▪ the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land, ▪ the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure, ▪ the monitoring of the planning impacts of development, ▪ the conservation or enhancement of the natural environment. |
| S7.11 contribution | a contribution of money or dedication of land free of cost for the provision of local infrastructure that is required by a condition imposed on a DA consent or a CDC and that is authorised under s7.11 of the EP&A Act |
| S7.12 contribution | a fixed rate levy for the provision of local infrastructure that is required by a condition imposed on a DA consent or a CDC and that is authorised under s7.12 of the EP&A Act |
| Corporate Strategic documents | means the documents required to be prepared by Council in accordance with Part 2 of Chapter 13 of the <i>Local Government Act 1993</i> . |
| WLEP 2012 | means the Willoughby Local Environmental Plan 2012. |