

Guide for Developers – Offer to Enter into a Planning Agreement

1.0 Purpose

This Guide is to assist Developers with understanding the Planning Agreement process and what is required in lodging an Offer to Enter into a Planning Agreement with Northern Beaches Council.

This Guide should be read in conjunction with Council's Planning Agreement Policy (which includes a flowchart showing the Planning Agreement Process). As such, this Guide is not intended to duplicate the contents of Council's Policy, the legislative requirements specific to Planning Agreements or the Practice Notes issued by NSW Government. In the event of an inconsistency, the legislative requirements and Practice Notes issued by NSW Government prevails, followed by Council's Planning Agreement Policy.

It is preferred that if a Developer is contemplating to voluntarily seek to enter into a planning agreement with Council, that the Developer seek a pre-lodgement meeting with Council's Strategic and Place Planning Unit to discuss the proposition. This is recommended before an Offer to Enter into a Planning Agreement is lodged with Council.

2.0 What constitutes an Offer to Enter into a Planning Agreement?

At the Developer's instigation, the Developer may seek to voluntarily enter into a planning agreement with Council to which the Developer is:

- dedicating land free of cost;
- paying a monetary contribution;
- providing any other material benefit; or
- providing any combination of the above,

to be used for or applied towards a public purpose.

If the Offer is in relation to provision of a Material Public Benefit (other than the dedication of land or the payment of a monetary contribution), this maybe through three (3) options:

- a. Provision of infrastructure not identified or contemplated by Council in an adopted Contributions Plan on private land.
- b. Provision of infrastructure not identified or contemplated by Council in an adopted Contributions Plan on public land, the parties of the Offer would need to include the owner(s) of the public land (this may be Council¹ or another Government authority).

¹ Before an Offer is lodged, discussion with the owner of the land and the person delivering the infrastructure on land not owned by them needs to occur first. Both parties must reach agreement in order to lodge an Offer to Enter into a Planning. In the case where Council is the landowner and party to the lodgement of the Offer, a Probity consultant will be engaged at the outset. There will identified separation of roles within Council in regard to the assessment of the Offer while those involved in the landowner role (for Council) will not participate in the assessment of the Offer.

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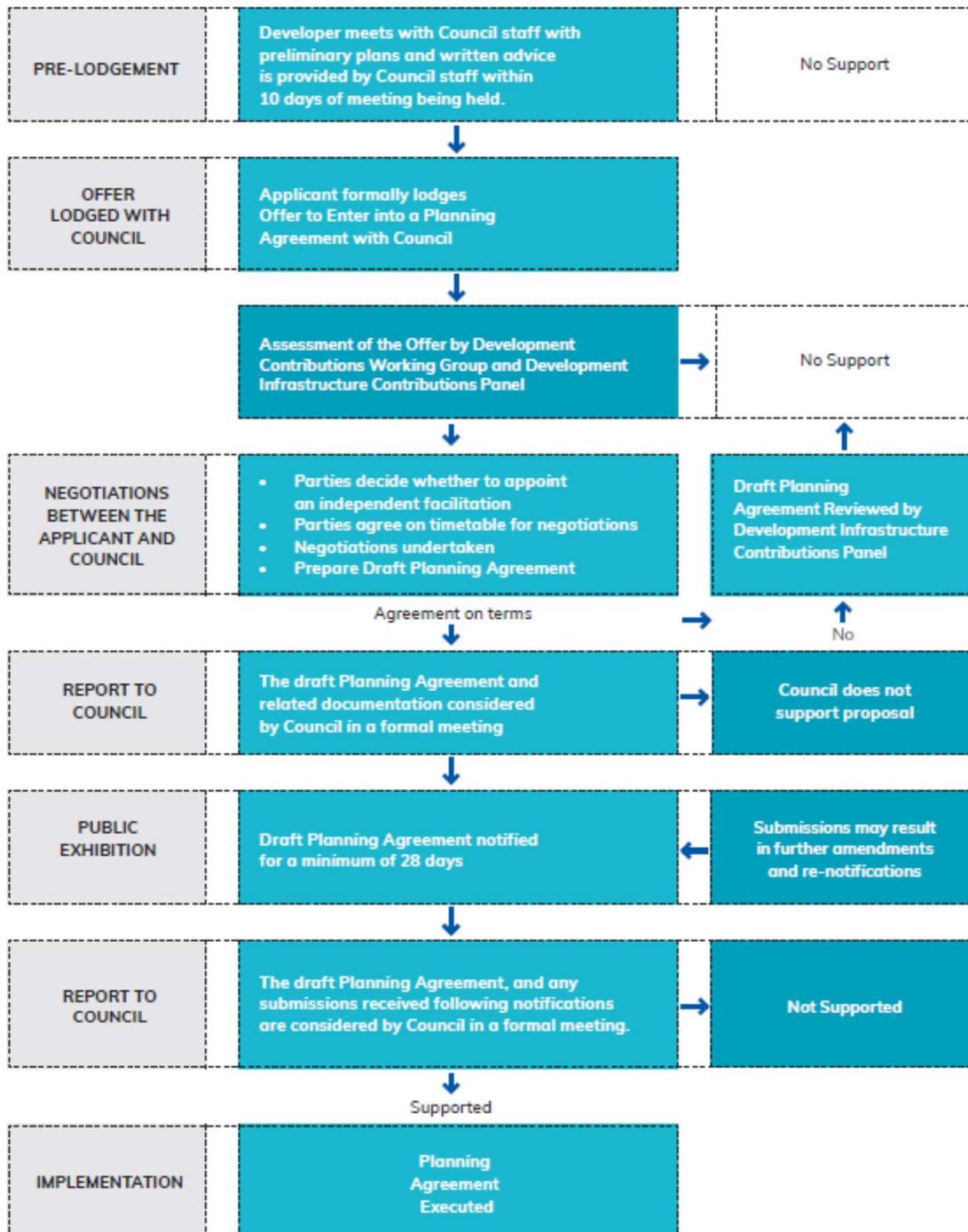
- c. Provision of listed infrastructure in an adopted Contributions Plan² and the Developer is seeking to reduce the monetary contribution payable to Council. In this instance, this can only be considered if an adopted Contributions Plan applicable to the subject land facilitates applicants to provide a Material Public Benefit in part or full satisfaction of a development consent condition imposed in accordance with section 7.11 or section 7.12 of the Environmental Planning and Assessment Act.

The Offer to enter into a planning agreement is to be in the form of a written correspondence from the Developer to Council. The written Offer should be signed by the Developer or his representative with authority to make the offer to Council; and is to include the contact details of the person/representative nominated as the Developer's contact.

² Provision of material public benefit refers to the Developer providing the infrastructure identified under the applicable Contributions Plan as Material Public Benefit that, in turn, offsets the monetary contribution amount charged against the development.

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Flowchart of Planning Agreement Process



3.0 Information to accompany the Offer

The information accompanying the Developer's letter of Offer to Enter into a Planning Agreement should include, but not be limited to, the following matters:

- a. Description of the Developer's Offer to Council and if relevant, any plans showing the Developer's Offer.
- b. If relevant, any application³ associated with the Developer's Offer.
- c. If relevant, confirmation of all owners of the land associated with the Offer as party(s) to the Offer.
- d. If the Developer's Offer involves dedication of land, then information addressing the following matters:
 - What the land is being dedicated for (i.e. road reserve, open space etc).
 - Timing of when the land is to be dedicated to Council (acknowledging this will occur after the works required on the land has been completed by the developer).
 - If works are required on the land before then land is intended to be dedicated to Council, then a set of Engineering plans including dimensions and cross-sections of the said works to ensure Council is fully aware of what structures (existing and to be completed) will be on the land at time it is to be dedicated to Council.
 - Details of how the land is intended to be dedicated, noting that this should be via a draft Plan of Subdivision.
 - The land intended to be dedicated identified in an adopted Contributions Plan – Works Schedule, Local Environmental Plan, or not.
 - Any encumbrances on the land as a result of completion of any works on land proposed to be dedicated to Council.
 - Land Valuation report regarding the land intended to be dedicated to Council.
- e. Address each key term required in Council's Planning Agreement Policy including but not limited to:
 - Rationale and origin of the Developer's Offer.
 - The Developer's Offer is to demonstrate public benefit (see 3.1)
 - Valuation of the Developer's Offer (see 3.2)
- f. Proposed implementation of the Developer's Offer (see 3.3)

³ An application is taken to be a Development Application or application for a Complying Development Certificate, or an application seeking a change to an environmental planning instrument lodged by the same Developer seeking to enter into a planning agreement with Northern Beaches Council.

3.1 Demonstrable Public Benefit of the Offer

Council will only enter into a Planning Agreement that provides a positive planning outcome for the Northern Beaches community. There must be a demonstrable public benefit arising from a Planning Agreement and this should be clearly demonstrated in the Developer's letter of Offer.

An outline of potential public benefits is set out in the table at Appendix A and should be used as a guide only. Appendix A is not intended to be an exhaustive list.

3.2 Valuation of the Offer

If the Offer is for land dedication, a market value of that part of the land the subject of the Offer is to be submitted with the Offer documentation. This market value is to be prepared by a registered property valuer and provided by the developer.

If the Offer relates to the carrying out of works for a public purpose, a cost estimate of the said works prepared by an independent quantity surveyor and the plans that the cost estimate has been prepared are to be submitted with the Offer documentation⁴. Documentation outlining the lifecycle costs of the works for a public purpose including operation or ongoing service delivery, as well as likely maintenance and replacement costs is to be submitted as part of the Offer documentation. This information will assist Council in determining whether to accept the Offer and what contribution towards those recurrent costs should be made by the developer.

In all instances, the costs of the valuation are to be at no cost to Council.

3.3 Proposed Implementation of the Offer

Information on proposed timing of when the Developer's Offer is to be provided to Council or, in the case of an infrastructure asset or land dedication then transfer into Council ownership.

If the Offer involves land being dedicated to Council (at no cost to Council) and the land being dedicated involves works being undertaken by the developer first, then the Implementation Plan is to include the following information:

- a. Timing for the land dedication acknowledging this will occur after the works required on the land has been completed by the developer.
- b. Any encumbrances on the land as a result of completion of any works on land proposed to be dedicated to Council.
- c. The manner in which that land (the subject of the Offer) is to be handed over to Council.

The Developer is advised that Council may inspect the land before the land dedication is executed.

⁴ Developers should check the Works Schedule of the applicable Contributions Plan in proposing to provide material public benefit as the value will be considered against the estimated cost of the infrastructure item (that is not a specific program delivery) if it is identified in the Works Schedule.

If the Offer relates to a Material Public Benefit, the Implementation Plan is to include the following information:

- a. Timetable for provision of the Offer.
- b. The design, technical specification and standard of any work required by the VPA to be undertaken by the developer.
- c. The manner in which a work is to be handed over to Council.
- d. The manner in which a material public benefit is to be made available for its public purpose.

The Developer is advised that Council will require:

- inspection of the works any may specify these inspections at/during construction and may include a final inspection as the works will be transferred into Council ownership.
- a warranty period for work, materials, buildings and any other property that form part of any public benefit. These warranties would generally be for a minimum of 12 months for materials and services such as electrical works and 15 years for structural items.

3.3 Lodgement Fee payable to Council

A lodgement fee is to accompany an Offer to enter into a planning agreement with Council. The lodgement fee is used by Council to administer and assess the Offer.

3.4 Are there other costs incurred by the Developer?

Cost may include the payment of an independent registered property valuer and/or quantity surveyor to establish the value of the key item(s) of the Offer.

If the Offer involves the carrying out of works for a public purpose by the Developer and the infrastructure was not identified in a Works Schedule of the applicable Contributions Plan, there will be required a reasonable contribution toward ongoing maintenance and replacement costs of the infrastructure. For more information, see Section 4.0 Recurrent charges of this Guide.

If the Offer is progressed to the preparation and exhibition of a draft Planning Agreement, the Developer is to make provision to pay:

- Council's costs of and incidental to preparing and entering into the Planning Agreement and Explanatory Note including reasonable legal costs in obtaining advice in connection with the Planning Agreement as well as administering and enforcing the Planning Agreement (as executed). This also applies to any amendment to a Planning Agreement.
- Public exhibition and lodgement into NSW Government's e-planning portal.

All costs associated with the delivery of the Developer obligations under the Planning Agreement are to be borne by the developer.

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4.0 Recurrent charges

All Planning Agreements that involve the carrying out of works for a public purpose⁵ by the Developer should include a reasonable contribution toward ongoing maintenance and replacement costs of the infrastructure. The developer may make monetary contributions towards ongoing maintenance and replacement costs or may offer to maintain infrastructure delivered for a certain period of time after handover.

The amount of any monetary contribution acceptable to Council will depend on the type and value of the works being handed over to Council, whether repair and maintenance works are likely to be needed and the anticipated costs of maintenance and repair works.

If the developer proposes to maintain the works after completion, a bond or bank guarantee will be required by Council to cover the likely maintenance works in the event the developer defaults.

Planning Agreements may also require a developer to make contributions towards other recurrent costs of public facilities such as operational or service provision costs.

5.0 What happens if the Offer is accepted and the Planning Agreement is now in place?

Council will routinely monitor the performance of the developer's obligations under a Planning Agreement.

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 under the Planning Agreement and obligations specified in the Implementation Plan.

All Executed Planning Agreements entered into by Council will be listed in a Planning Agreements Register that is available on Council's website, <https://www.northernbeaches.nsw.gov.au/planning-and-development/building-and-renovations/planning-agreements>

⁵ In this instance, the works for a public purpose is not a listed infrastructure item in a Works Schedule of the applicable Contributions Plan. If the material public benefit is an item listed in the applicable Contributions Plan, a maintenance bond for a specified period may be required.

6.0 Review Date

February 2026

7.0 Revision History

Revision	Date	Change	HPE CM Ref
1	October 2019	Drafted VPA Guideline – exhibited with Draft VPA Policy	2019/489894
2	December 2019	VPA Guideline implemented concurrent with Council adoption of the VPA Policy	2019/483818
3.1	February 2022	Draft Guide for Developers - Attachment to accompany the draft Planning Agreements Policy when placed on exhibition	2022/080194
3.2	June 2022	MASTER VERSION – No change made from exhibition copy (exhibited 29 April to 29 May 2022)	2022/080194

APPENDIX A – POTENTIAL PUBLIC BENEFITS

The following is a list of possible requirements that Council may have for planning agreements. This list is not exhaustive and developers are encouraged to discuss with Council these or other requirements that may be included in a planning agreement. Planning agreements may involve monetary contributions, partial or full construction of new facilities, expansion, upgrades, augmentations, embellishments, fit-outs and resourcing of existing facilities or any other public benefit as agreed to by Council.

Infrastructure	Accessibility improvements – accessible parking, kerb ramps, modifications to public buildings or areas
	Roads – design and construction
	Open space – parks, public places, embellishment
	Drainage and stormwater controls
	Traffic measures
	Transport outcomes
	Pedestrian and cycleway linkages and footpaths
	Telecommunication networks
	Power, water, gas
	Communications and information technology such as WIFI public space
	Bridges (vehicular and pedestrian)
	Flood management / mitigation works
Facilities	Community buildings e.g. meeting rooms, halls, libraries
	Child care centres
	Public toilets
	Youth spaces
	Public leisure facilities
	Performance spaces
	Civic spaces
	Public car parking areas and commuter parking
	Bus shelters

	Family care facilities
	Sport, recreation and activity centres
	Business, research and creative industries incubator space and ancillary uses
	Affordable Housing (outside of Council's adopted Affordable Housing Scheme)
Public Domain Improvements	Paving – paths, streets and open space areas
	Streetscape improvements and general streetscape upgrades
	Plantings – streets and open space areas
	Furniture – seats, bins
	Banners
	Public art in streets, open space and other public domain space
	Kerbs and gutters
	Treatment and/or features in public places
	Facilities such as kiosk in parks and open spaces
	Turf
	Public leisure, sport and recreation facilities
	Environmental management improvements such as water and energy minimising devices
	Restoration and management of natural areas including beaches, bushland, creeks and lagoons
	Water quality devices
	Water bubblers, lockers and other amenities
Signage including suburb identification, way finding, parking, interpretation and information signs for pedestrians, cyclists and vehicular users	
Other	Cash contributions
	Land in particular where it is not identified in a Contributions Plan, such as dedications for parks, facilities, pedestrian connectivity and new roads

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	Contributions for the development of community facilities plans and cultural facilities plans
	Aboriginal site protection
	Other benefits in line with Council plans and strategies, including plans of management, flood plain management plans, traffic and transport plans, masterplans, development controls plans, local environmental plans and management plans
	Maintenance / Rehabilitation in perpetuity e.g. pest control and bush regeneration
	Other public benefits that provide a positive planning outcome for the people of the Northern Beaches and meet the objectives of the <i>Environmental Planning and Assessment Act</i>