

Guideline

Voluntary Planning Agreements

1.0 Purpose

This Guideline underpins the Northern Beaches Council Voluntary Planning Agreements Policy (VPA Policy) adopted by Council on 15 December 2019. This Guideline should be read in conjunction with the VPA Policy.

This Guideline sets out the procedures and requirements relating to all VPAs entered into by the Northern Beaches Council, and applies to all land in the Northern Beaches Council local government area (LGA), including any land owned by the Council.

This Guideline also applies to land outside of the Northern Beaches Council LGA in case of a joint VPA between Council and another council or planning authority for land outside of the Northern Beaches Council LGA.

2.0 Principles

The guiding principles of this Guideline, and related Policy, are:

- a) To establish a fair, transparent and accountable framework governing the use and preparation of VPAs by Council.
- b) To enhance the range and extent of public benefits arising from a VPA.
- c) To ensure a consistent approach is undertaken in the negotiation and preparation of all VPAs that is efficient, fair and accountable.
- d) To align with Council's corporate and strategic planning context, including Council's Local Strategic Planning Statement, Community Strategic Plan, Delivery Plan, Operational Plan, Development Contribution Plans or other Infrastructure Planning Documents.
- e) To establish a probity framework for the negotiation, preparation and implementation of VPAs.
- f) To facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate VPAs for the provision of public benefits.

3.0 What is a VPA?

Section 7.4 of the Act sets out the circumstances under which a VPA may be entered into. It provides that a '*...planning agreement is a voluntary agreement or other arrangement between a planning authority (or 2 or more planning authorities) and a person (the developer):*

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

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 a public purpose.

4.0 Requirements of a VPA

Section 7.4(3) of the Act provides the mandatory requirements of a VPA. Council's VPA Policy and Guideline are designed to ensure these requirements are met for every VPA.

The Act does not preclude a VPA containing provisions in addition to the mandatory matters that may be necessary or desirable in particular cases. Council has prepared a template VPA that must form the basis for a VPA and this template is Council's preferred form for a VPA. Please refer to Attachment A.

5.0 Explanatory note

Clause 25E(1) of the Regulation requires that an explanatory note must accompany a VPA that:

- a) summarises the objectives, nature and effect of the proposed VPA, amendment or revocation, and
- b) contains an assessment of the merits of the proposed VPA, an amendment or revocation including the impact (positive or negative) on the public or any relevant section of the public.

Each explanatory note must be prepared jointly by the parties proposing to enter into the VPA.

Council has prepared a template explanatory note. Please refer to Attachment B.

6.0 Preferred process

The preferred process relating to the consideration, notification and entering of VPAs is as follows:

- a) Where a developer proposes a VPA in connection with an application for instrument change or development application, it should indicate to the Council its intention to accompany its application with a VPA offer before making the application. The Council will indicate whether or not it agrees, in principle, to negotiate a VPA with the proponent after an initial consideration of the appropriateness of the VPA offer. Both the developer and the Council must consider who should be the parties to the VPA.

This process will be undertaken by a Responsible Officer in consultation with the Development Contributions Working Group/Development Contributions Committee.

- b) The VPA offer must address each key term required by the VPA Policy and this Guideline. If the VPA offer is considered appropriate, the VPA and agreed explanatory note should be drafted and should accompany the development or instrument change application to Council so that the VPA, explanatory note and application can be exhibited together. The application must clearly record the developer's offer to enter into the VPA if the application is approved.
- c) An assessment of the VPA application will be undertaken by the Development Contributions Working Group on behalf of the Development Contributions Committee.
- d) Following consideration of the draft VPA and explanatory note by the Development Contributions Committee, a recommendation will be made to the Council whether the VPA offer should be supported by Council.
- e) If Council resolves to support the terms in the draft VPA and explanatory note, the proposed draft VPA and explanatory note will be publicly notified and exhibited in accordance with the Act, the Regulation and clause 10.0 below. Any subsequent amendments to the proposed draft VPA and explanatory note will be re-notified if there is a material change.

- f) Following exhibition of the draft VPA, the Committee will consider any post exhibition amendments and make a recommendation to Council who will determine if it wants to accept the draft VPA.
- g) If Council resolves to accept a draft VPA, then it can be entered into.

7.0 Demonstrable public benefit Council will ultimately require that a VPA provides a positive planning outcome for the Northern Beaches community. There must be a demonstrable public benefit arising from a VPA and this should be clearly demonstrated in the VPA offer and application documentation. This information will help Council to consider the VPA offer/application.

An outline of potential public benefits is set out in the table at Attachment C however it should be noted that Attachment C is not intended to be exhaustive.

8.0 Implementation plan

In most circumstances, the Council will require an implementation plan. This will be incorporated in the VPA and may include:

- a) The timetable for provision of planning obligations under the VPA.
- 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 in accordance with the VPA.
- e) 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.

Council will require a VPA to make provision for payment by the developer of Council's costs of and incidental to preparing and entering into the VPA as well as administering and enforcing the VPA. Cost may include the payment of an independent registered property valuer and/or quantity surveyor to establish the value of the key items of the VPA.

9.0 Pooling of development contributions

Where a proposed VPA provides for a monetary contribution by the developer, the Council may, in accordance with section 7.3 of the Act, pool money paid for different purposes and apply that money progressively for different purposes.

Where a proposed VPA provides for a monetary contribution by the developer, the VPA should provide that money paid under the VPA may be pooled with money paid under other VPAs and applied progressively for the different purposes under those VPAs.

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

10.0 Public notification of a draft VPA

The Act requires that, a draft VPA must be publicly notified and available for public inspection for a minimum period of 28 days. Council may decide to notify a VPA for a longer period at its discretion.

Council will also notify the application to which a draft VPA relates in accordance with relevant environmental planning instruments and the requirements of any gateway determination.

Council will publicly re-notify and make available for public inspection a draft VPA and the application to which it relates if, in Council's opinion, a material change is made to the terms of the draft VPA 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 draft VPA or the application, or their formal consideration by Council, or for any other reason.

11.0 Public comment on a draft VPA

All public submissions to a draft VPA will be considered before finalisation of the VPA for execution. Council may also resolve not to proceed with a VPA as a result of matters raised in a public submission or for any other appropriate reason in Council's absolute discretion.

12.0 When is a VPA entered into?

A VPA can be entered into at any time after the VPA is publicly notified in accordance with the Act and Regulation as agreed between the parties after which obligations under the VPA take effect.

Council may also impose conditions of consent requiring compliance with the VPA and the delivery of the relevant VPA contributions at the required time.

Council will usually require a VPA in connection with an application for instrument change to be executed before the Council submits the relevant draft planning instrument change to the Minister to be made, or before Council makes the instrument change under delegation. If the VPA is not executed at an appropriate time, the Council may (or may request the Minister to) not proceed with the instrument change, in accordance with Section 3.35 of the Act.

13.0 Monitoring and review of a VPA

Council will routinely monitor the performance of the developer's obligations under a VPA and report them in accordance with the Act.

Council will require the VPA to contain a provision establishing a mechanism under which the VPA is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance under the VPA and obligations specified in the Implementation Plan.

14.0 Recurrent charges

Where a VPA proposes works or dedication of land and/or building assets, Council may require the developer to provide supporting documentation outlining the lifecycle costs to Council, including operation or ongoing service delivery, as well as likely maintenance and replacement costs. This information will assist Council in determining whether to accept a VPA offer and what contribution towards those recurrent costs should be made by the developer.

All VPAs that involve the provision of public infrastructure through works to be carried out 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.

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

15.0 Council's costs of negotiating, entering into, monitoring and enforcing a VPA

The Council will require a VPA to make provision for payment by the developer of the whole of Council's costs of and incidental to negotiating, preparing, advertising and entering into the agreement (including reasonable legal costs in obtaining advice in connection with the VPA) as well as administering and enforcing the agreement. This also applies to any amendment to a VPA.

16.0 Costs associated with delivery of the planning obligations

All costs associated with the delivery of the planning obligations under the VPA are to be borne by the developer.

17.0 References and related documents

- *Environmental Planning and Assessment Act 1979*, particularly Subdivision 2 of Part 7
- *Environmental Planning and Assessment Regulation 2000*, particularly Division 1A of Part 4
- Practice Note on Planning Agreements published by the Department of Infrastructure Planning and Natural Resources (July 2005)
- *Draft Practice Note on Planning Agreements* published by the Department of Planning, Industry and Environment (November 2016)

18.0 Attachments

- A. Voluntary Planning Agreement Template
- B. Explanatory Note Template
- C. Potential Public Benefits

19.0 Definitions

Act means the *Environmental Planning and Assessment Act 1979*,

Council means the Northern Beaches Council,

Developer is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument), 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 application has the same meaning as in the Act,

Development contribution means the kind of provision made by a developer under a Voluntary Planning Agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used for or applied towards a public purpose,

Development Contributions Committee means the Northern Beaches Council committee responsible for the preparation, implementation and management of development contributions Plans in the Northern Beaches area, and making recommendations to Council regarding Voluntary Planning Agreements,

Development Contributions Working Group means the Northern Beaches Council group that supports the Development Contributions Committee in the preparation, implementation and management of development contributions plans and Voluntary Planning Agreements in the

Northern Beaches area. The Working Group undertakes assessments of offers for a Voluntary Planning Agreement,

Explanatory note has the same meaning as in the Regulation,

Instrument Change means a change to an environmental planning instrument to facilitate a development the subject of a Voluntary Planning Agreement,

Planning obligation means an obligation imposed by a Voluntary Planning Agreement on a developer requiring the developer to make a development contribution,

Practice Note means the Practice Note on Planning Agreements published by the Department of Infrastructure Planning and Natural Resources (July 2005),

Public includes a section of the public,

Public benefit is the benefit enjoyed by the public as a consequence of a development contribution which may be tangible and / or intangible,

Public facilities means public infrastructure, facilities, amenities and services not including water supply or sewerage services,

Regulation means the *Environmental Planning and Assessment Regulation 2000*,

VPA means a Voluntary Planning Agreement.

20.0 Responsible Officer

- Executive Manager Strategic & Place Planning
- Executive Manager Development Assessment
- Executive Manager Environment & Climate Change
- Executive Manager Financial Planning & Systems
- Executive Manager Property

21.0 Review Date

October 2023

22.0 Revision History

Revision	Date	Change	HPE CM Ref
1	October 2019	Drafted VPA Guideline	2019/489894
	December 2019	Adopted by Council	2019/483818

Attachment A – Voluntary Planning Agreement Template

Planning Agreement

PARTIES

The Northern Beaches Council 725 Pittwater Road, Dee Why, New South Wales (Council)

And

of ##, (Developer)

BACKGROUND

(For Development applications)

A. On, ##, the Developer made a Development Application to Council for Development Consent to carry out the Development on the Land.

B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make development contributions towards the Public Facilities if that Development consent was granted.

(For changes to Environmental Planning Instruments)

A. On, ##, the Developer made an application to Council for the Instrument Change for the purpose of making a Development Application to Council for Development Consent to carry out the Development on the Land.

B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make development contributions towards the Public Facilities that Development Consent was granted.

C. The Instrument Change was published in NSW Government Gazette No. ## on ## and took effect on ##.

D. On, ##, the Developer made a Development Application to Council for Development Consent to carry out the Development on the Land.

OPERATIVE PROVISIONS

1. Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2. Application of this Agreement

(Specify the land to which the Agreement applies and the development to which it applies)

3. Operation of this Agreement

(Specify when the Agreement takes effect and when the Parties must execute the Agreement)

4. Definitions and interpretation

4.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means ##.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used for or applied towards a public purpose.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or Regulation relating to the imposition or administration of the GST.

Instrument Change means a change to the ## Local Environmental Plan ##.

Land means Lot ## DP ##, known as ##.

Party means a party to this agreement, including their successors and assigns.

Public Facilities means ##.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) G.A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- k) References to the word 'include' or 'including' are to be construed without limitation.

- l) A reference to this Agreement includes the agreement recorded in this Agreement.
- m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- n) Any schedules and attachments form part of this Agreement.

5. Development contributions to be made under this Agreement

SCHEDULE 1 – REFERENCE SCHEDULE

Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made.

Item	Name	Description
1	Advanced Payments	
2	Contributions	
3	Dedicated Land	
4	Public Benefits	

6. Application of the development contributions

SCHEDULE 2 – DEVELOPER'S WORK

Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied.

Item of Work	Development Stage	Final Inspection Stage	Relevant Drawing Numbers

7. Application of section 7.11 and section 7.12 of the Act to the development

SCHEDULE 3 – PUBLIC BENEFITS

Public Benefits Offer and development contributions

Table 1 identifies the development contributions payable in respect of the proposal calculated in accordance with the relevant Development Contributions Plan.

Contribution based on a total development cost of \$			
Contributions	Total development cost (as defined in the Development Contribution Plan)	Levy rate	Payable
Section 7.12 Levy			

8. Registration of this Agreement

(Specify whether the Agreement is to be registered as provided for in section 7.6 of the Act)

9. Review of this Agreement

(Specify whether the Agreement is to be registered as provided for in section 7.6 of the Act)

10. Dispute resolution

10.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 10.

10.2 Response to Notice

Within ten (10) business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

10.3 Negotiation

The nominated representative must:

- a) meet to discuss the matter in good faith within five (5) business days after service by the Respondent of notice of its representative;
- b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Dispute Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 Mediation

If a party gives a Dispute Notice calling for the dispute to be mediated:

- a) the parties must agree to the terms of reference of the mediation within five (5) business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- b) the Mediator will be agreed between the parties, or failing agreement within five (5) business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- c) the Mediator appointed pursuant to this clause 10.5 must:
 - i. have reasonable qualifications and practical experience in the area of the dispute; and
 - ii. have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;

- e) the parties must within five (5) business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- g) in relation to costs and expenses:
 - i. each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - ii. the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

10.6 Expert Determination

If the dispute is not resolved under clause 10.3 or 10.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- a) The dispute must be determined by an independent expert in the relevant field:
 - i. agreed upon and appointed jointly by Council and the Developer; or
 - ii. in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
- b) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- c) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- e) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- f) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

10.7 Litigation

If the dispute is not finally resolved in accordance with this clause 10, either party is at liberty to litigate the dispute.

10.8 Continue to perform obligations

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

11. Enforcement

- 11.1 Nothing in this Agreement prevents Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.
- 11.2 Until such time as the development contribution has been paid in full the Developer must:
- a) Notify Council in writing of the name and contact details of any Certifying Authority to which it has applied for a Construction Certificate at the same time that such application is made;
 - b) At the time it lodges any application for a construction certificate notify the Certifying Authority in writing of the existence and terms of this Agreement;
 - c) Procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue a Construction Certificate until Council provides written confirmation that the development contribution has been paid.
- 11.3 The Developer acknowledges and agrees that Council has a caveatable interest in the Land from the date of Development Consent and shall be entitled to lodge and maintain a caveat on the title to the Land notifying Council's interest created by this Agreement.
- 11.4 The Developer will upon execution of this Agreement deliver to Council a caveat in registrable form with the consent to caveat signed by the Developer notifying Council's interest created by this Agreement together with a cheque in favour of NSW Land Registry Services for the registration fee on the caveat.
- 11.5 Council will provide such written consents and registrable documents to the Developer to enable the Land to be mortgaged provided that the mortgagee acknowledges Council's interest in the Land under this Agreement and agrees to the registration of this Agreement in accordance with its terms.
- 11.6 Upon registration of the Agreement on the title to the Land in accordance with clause 8 or payment of the development contribution to Council or surrender of the Development Consent, the Developer will be entitled to withdrawal of the caveat.

12. Notices

- 12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- a) Delivered or posted to that Party at its address set out below.
 - b) Faxed to that Party at its fax number set out below.
 - c) Emailed to that Party at its email address set out below.

Council

Attention: CEO, Northern Beaches Council

Address: PO Box 82 Manly, NSW, 1655

Fax Number: 02 9971 4522

Email: council@northernbeaches.nsw.gov.au

Developer

Attention:

Address:

Fax Number:

Email:

- 12.2 If a Party gives the other Party three (3) business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- a) If it is delivered, when it is left at the relevant address.
 - b) If it is sent by post, two (2) business days after it is posted.
 - c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

13. Assignment and dealings

Until the development contribution is paid in full, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so unless the Developer:

- 14.1 Gives Council no less than ten (10) business days' notice in writing of the proposed sale, transfer, assignment, novation, charge, encumbrance or other dealing with its rights in respect of the Land;
- 14.2 Procures that any buyer, transferee, assignee or novatee promptly executes an Agreement in favour of Council whereby the buyer, transferee, assignee or novatee becomes contractually bound with Council to perform the Developer's obligations under this Agreement;
- 14.3 In the event of a proposed charge, mortgage, encumbrance or other dealing with the Land, provides to Council a bank guarantee unlimited in time from a bank and on terms acceptable to Council to secure the payment of the development contribution.

14. Costs

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer.

15. Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

16. Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

17. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the nonexclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

18. Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

19. No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

20. Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

21. Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

22. Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

23. Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It

is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

24. GST

- 25.1 Unless otherwise indicated, all amounts payable by one party to the other party in relation to a supply under this Agreement have been calculated exclusive of any GST which may be imposed on the supply.
- 25.2 If any supply made under this Agreement is, or becomes, subject to GST, the party to whom the supply is made (“**Recipient**”) must pay to the party making the supply (“**Supplier**”), as consideration, in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- 25.3 Any amount in respect of GST payable under clause 25.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.
- 25.4 If any party is required to reimburse or indemnify the other party for a cost or expense (“**Cost**”) incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.
- 25.5 If GST is linked with the abolition or reduction of other taxes and charges, all amounts payable by the Recipient to the Supplier under this Agreement (excluding GST) must be reduced by the same proportion as the actual total costs of the Supplier (excluding GST) are reduced either directly as a result of the abolition or reduction of other taxes and charges payable by the Supplier or indirectly by way of any reduction in prices (excluding GST) charged to the Supplier. Both parties must also comply with relevant provisions of the *Trade Practices Act 1974* (Cth).

Execution

Dated:

Executed as an Agreement:

Note: this explanatory note providing details on this Agreement may not be used to assist in construing this Agreement.

Attachment B – Explanatory Note Template

Explanatory Note

Proposed draft Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979*

1. Parties
 - ## Northern Beaches Council (Planning Authority)
 - ## (*Planning Authority*)
 - ## (*Developer*)
2. Description of subject land
3. Description of proposed change to environmental planning instrument/development application
4. Summary of objectives, nature and effect of the proposed draft Planning Agreement
5. Timing of delivery of the public community benefit (*Note: Information is to be provided on the timing of delivery of the proposed benefits in relation to the issuing of construction, occupation or subdivision certificates.*)
6. Other Matters

Signed and dated by all Parties

Note: This template has been drafted for a proposed draft planning agreement, but applies equally to a proposed amendment or revocation of a VPA.

Attachment C – 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 storm water 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
Public domain improvements	Paving – paths, streets and open space areas Plantings – streets and open space areas

	<p>Furniture – seats, bins</p> <p>Banners</p> <p>Public art in streets, open space and other public domain space</p> <p>Kerbs and gutters</p> <p>Treatment and/or features in public places</p> <p>Facilities such as kiosk in parks and open spaces</p> <p>Turf</p> <p>Public leisure, sport and recreation facilities</p> <p>Environmental management improvements such as water and energy minimising devices</p> <p>Restoration and management of natural areas including beaches, bushland, creeks and lagoons</p> <p>Water quality devices</p> <p>Water bubblers, lockers and other amenities</p> <p>Signage including suburb identification, way finding, parking, interpretation and information signs for pedestrians, cyclists and vehicular users</p>
Other	<p>Cash contributions</p> <p>Land such as dedications for parks, facilities, pedestrian connectivity and new roads</p> <p>Contributions for the development of community facilities plans and cultural facilities plans</p> <p>Aboriginal site protection</p> <p>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</p> <p>Maintenance / Rehabilitation in perpetuity e.g. pest control and bush regeneration</p> <p>Other public benefits that provide a positive planning outcome for the people of the Northern Beaches and meet the objectives of the Act</p>