

Name of policy:	Planning Agreement		
Adoption by Council:	28 June 2023	Minute number:	247/2023
Last review date:			
Review timeframe:	2 years (or when required as a result of changes to legislation or Council operations)		
Next scheduled review date:			
Related legislation:	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979 (NSW)</i> • <i>Environmental Planning and Assessment Regulation 2021 (NSW)</i> • <i>Great Lakes Local Environmental Plan 2014 (NSW)</i> • <i>Greater Taree Local Environmental Plan 2010 (NSW)</i> • <i>Gloucester Local Environmental Plan 2010 (NSW)</i> 		
Associated policies/documents:	<ul style="list-style-type: none"> • <i>Planning Agreement Guidelines (MidCoast Council)</i> • <i>Rezoning Applications Policy (MidCoast Council)</i> • <i>Rezoning Applications Stage 1 & 2 Guidelines (MidCoast Council)</i> • <i>Clause 4.1B of Great Lakes Local Environmental Plan 2014 Interim Policy (MidCoast Council)</i> • <i>Community Engagement Policy (MidCoast Council)</i> • <i>Determination of Applications and Approvals Policy (MidCoast Council)</i> • <i>Fraud and Corruption Control Policy (MidCoast Council)</i> • <i>Code of Conduct (MidCoast Council)</i> • <i>Councillor and Staff Interaction Policy (MidCoast Council)</i> • <i>Determination of Applications and Approvals Policy (MidCoast Council)</i> • <i>Local Environmental Plan Making Guideline (Department of Planning, Industry and Environment)</i> 		

	<ul style="list-style-type: none"> • Planning Agreement Practice Note (Department of Planning, Industry and Environment)
Responsible division:	Liveable Communities

1. Policy objectives

- a) To provide a transparent, equitable and consistent framework for establishing and administering planning agreements by Council.
- b) To create a pathway for future development to contribute towards public facilities and other public benefits in the MidCoast area.

2. Policy statement

MidCoast Council utilises planning agreements to deliver material benefits to the community. This can include, but not be limited by, the delivery of public amenities and services, dedication of land for a public purpose and the conservation or enhancement of the natural environment. They are developed in a clear and transparent way, with community participation and comply with legislative requirements.

3. Coverage of the policy

This policy applies to all requests and any subsequent planning agreements that are entered into by Council, under the *Environmental Planning and Assessment Act 1979* (referred to as the Act) and *Environmental Planning and Assessment Regulation 2021* (referred to as the Regulation).

4. Strategic Plan link

MidCoast Community Strategic Plan 2022-2032

Community Outcome 2: An integrated and considered approach to managing our natural and built environments.

<i>Strategic Objective 2.5 We balance the needs of our natural and built environment.</i>	<i>Strategy 2.5.2 Plan, provide, manage and advocate for infrastructure that continues to meet the needs of our community.</i>
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5. Purpose of Planning Agreements

- a) A planning agreement allows planning authorities and developers to work together to deliver outcomes for the community. They are voluntary and most often between Council and a developer but may also include other related parties (e.g. NSW Government Departments). The negotiation of a planning agreement is at the discretion of all parties.
- b) The Act sets out when a planning agreement may be used and the type of planning benefit that a developer is required to deliver to the community. The Regulation provides further information around the making, amending and ending of planning agreements, giving public notice and other procedural arrangements.
- c) Planning agreements are typically negotiated when a developer is submitting a planning proposal, development application, or an application for a complying development certificate. They are legally binding and are generally required to be registered on the land title for the life of the agreement. This means the planning agreement will remain in force regardless of any change in ownership of the land.

- d) Council will not enter into a planning agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in the Act. Development that is unacceptable on planning grounds will not be granted consent because of benefits offered by a developer.
- e) Priority will be given to planning agreements that contribute to Council’s planning vision for the area as set out in the Hunter Regional Plan 2041 (2022), MidCoast Community Strategic Plan, MidCoast Local Strategic Planning Statement (LSPS) and supporting planning documents (as amended from time to time).

6. Probity

Council’s Guidelines on Planning Agreements outlines a process that will ensure the negotiation of any planning agreement is transparent, equitable and consistently achieves public benefits.

7. Relationship to other contributions mechanisms

A planning agreement will not automatically exempt developers from any existing local infrastructure contribution plans (also known as contribution plans) that may apply under the Act. Council will negotiate any such exclusion as part of the preparation of the planning agreement.

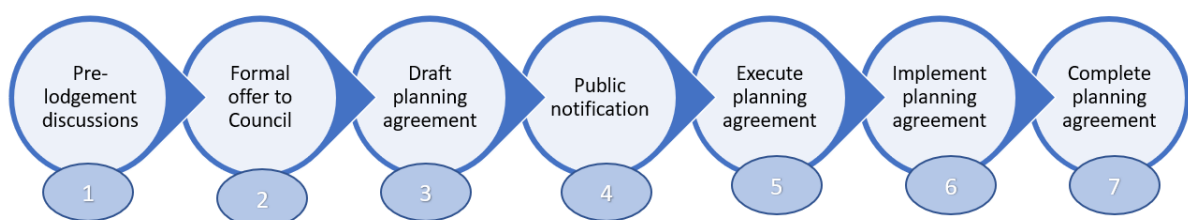
8. Guiding principles for Negotiating a Planning Agreement

The guiding principles that Council will consider in any negotiation of a planning agreement may include, but not be limited to; the following:

- Planning agreements must be underpinned by strategic land use and infrastructure planning and must address expected growth and the associated infrastructure demand.
- A planning agreement is a voluntary agreement. Council cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in relation to a proposed development or that the developer has not offered to enter into such an agreement.
- Planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls.
- Planning agreements must include public benefits related to the associated development, and the public benefits should be clearly documented.

Council’s Planning Agreement Guidelines separates a planning agreement into seven main steps, as seen in Figure 1. The guidelines detail each of these steps and is designed to assist council officers, developers and the broader community in navigating the processes involved with planning agreements. The Guidelines sit outside of this policy and will be updated when required as a result of changes to legislation or Council operations.

Figure 1: Steps in a planning agreement



9. Public notification

The Act requires that a planning agreement must be publicly notified and available for inspection for a minimum period of 28 days. Council's Community Engagement Strategy 2022-2025 requires a minimum exhibition timeframe of 25 working days. In some instances, Council may choose to exhibit for a longer period, for example when notification occurs over public holidays.

10. Register on title

The developer is to register the planning agreement on the title of the relevant folios with Land Registry Services, to ensure landowners are aware of the agreement.

11. Monetary contributions

All monetary contributions received as part of a planning agreement, will be held by Council, and used for the purpose of delivering the public benefit as stated in the agreement.

12. Dispute resolution

The planning agreement is to detail requirements for mediation of disputes between the parties to the planning agreement. These requirements must be met before the parties may exercise any other legal rights in relation to the dispute.

13. Payment of Council's costs

In line with Council's Fees and Charges, the developer will be required to pay a Planning Agreement Management Fee to cover Council's costs associated with planning agreements. This can include, for example, drafting of documents, legal costs, notification costs, land valuations etc.

Payment of the management fee will be required before the drafting of the planning agreement. Any additional costs will be negotiated between the parties and will be required to be paid before a planning agreement is executed.

14. Planning Agreement register

Council is required to keep a public register of all active planning agreements. This Planning Agreement Register is available on Council's website. Council will also publish the required information on the NSW planning portal.

15. Monitoring and review of a Planning Agreement

Council will monitor the performance of the developer's obligations under a planning agreement and report them to the community in accordance with the Act and Regulation. Council is also required to report on the Planning Agreement Register as part of Council's annual report.

16. Amendment of a Planning Agreement

Council will consider requests to amend a current planning agreement. This process follows the same pathway as the consideration, drafting and notification processes of the initial planning agreement as detailed in Council's Planning Agreement Guidelines.

17. Novating the Planning Agreement to another party

Council will process these requests as set-out in Council's Planning Agreement Guidelines.

18. Completion of a Planning Agreement

If all obligations of the planning agreement have been met, Council will consider the agreement to have been completed and will update its status on the Planning Agreement Register to reflect this. The register is available on Council's website.

Where the landowner has completed their part of a planning agreement, but obligations remain for other parties (and therefore the agreement has not yet concluded). The developer or landowner may request Council's agreement to remove the planning agreement from the land title and return any bank guarantee/s that may apply. Council will require this request in writing, along with evidence that the developer has fulfilled its obligations under the planning agreement relating to that land, and to which the security applies.

In this instance the planning agreement remains on Council's register until all obligations have been satisfied. Council will make arrangements to update its internal systems including mapping and planning certificate information.

19. Definitions

Act	Means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> .
Development application	Has the same meaning as in the Act: <i>development application</i> means an application for consent under Part 4 to carry out development but does not include an application for a complying development certificate.
Development consent	Has the same meaning as in the Act: <i>development consent</i> means consent under Part 4 to carry out development and includes, unless expressly excluded, a complying development certificate.
Contributions Plan	Means an adopted plan of Council made in accordance with the Act (section 7.18 at the time of writing this policy).
LEP Amendment	Means a change to a local environmental planning instrument to enable a development application to be made to carry out development (rezoning).
Planning benefit	The benefit enjoyed by the community from the delivery of public infrastructure, services or other provisions that supports the community as a result of development.
Planning Agreement / the Agreement	Has the same meaning as section 7.4 of the Act: <i>A planning agreement is a voluntary agreement or other arrangement under this Division between a planning authority (or 2 or more planning authorities) and a person (the developer)—</i> <i>a) who has sought a change to an environmental planning instrument, or</i>

	<p>b) <i>who has made, or proposes to make, a development application or application for a complying development certificate, or</i></p> <p>c) <i>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.</i></p>
Planning proposal	<p>Has the same meaning as the Department of Planning, Industry and Environment’s Local Environmental Plan Making Guideline:</p> <p>Planning proposal - a document and supporting information that explains the intended effect and justification of a proposed LEP or amendment to an LEP.</p>
Regulation	<p>Means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).</p>

20. Responsible division

Liveable Communities

21. Attachments

Nil.