

Planning agreements – car parking deficits

Policy, procedure, protocol	Policy
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Strategy	5.1.6 Make prioritised decisions in the long-term interest of the broad community and have regard to financial and infrastructure sustainability

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1. Purpose

The purpose of the policy is to establish a framework that is fair, transparent, and accountable to the community and developers in the negotiation of planning agreements where proposed non-residential developments have on-site car parking deficiencies.

2. Definitions

planning agreement means a voluntary agreement referred to in section 93F of the Act.

3. Background/legislative requirements

Council has prepared this policy to provide requirements and guidance for the use of planning agreements for non-residential developments which feature on-site car parking deficiencies including within Council's CBD/commercial areas.

An offer by a developer to enter into a planning agreement of this nature with the Council may be made in conjunction with a development proposal or a proposal seeking a change to Clarence Valley Local Environmental Plan 2011 (CVLEP 2011). The developer may make request to Council to enter into negotiations with it in relation to the form and substance of the planning agreement that will be the subject of its offer. The content of, and process and procedures for negotiating, exhibiting and executing planning agreements are set out in the Environmental Planning and Assessment Act 1979 (the Act) and the Environmental Planning and Assessment Regulation 2000 (the Regulation).

Council has a duty to act with honesty, transparency and in the interests of the community in planning agreement negotiations. This policy is intended to help achieve this objective by setting out Council's policy on the use, negotiation, and administration of planning agreements to which it becomes a party, that relate to proposed developments with non-residential on-site car parking deficiencies.

The policy seeks to address the matters that the Department of Planning and Environment's Development Contributions Practice Note suggests that should be set out for planning agreement policies and procedures in general. These are incorporated at **Attachment 1**.

Legislation and technical guidance relevant to planning agreements and associated policies include:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Developer Contributions Practice Note – Planning Agreement

4. Policy, protocol or procedure statement

4.1 Land to which policy applies

This policy applies to non-residential development *in Business zones under CVLEP 2011*.

4.2 Key principles for planning agreements relating to proposed non-residential developments with on-site car parking deficiencies

The following principles reflect the purpose of this policy.

- a) This policy relates to proposals for non-residential development in Council's CBD areas and Business zones under CVLEP 2011.
- b) Council officers will assess the appropriate total number of car parking spaces required to be provided on-site for a proposed development, taking into consideration the provisions of Council's relevant Development Control Plan, policies, and environmental planning instruments.
- c) If a development proposal does not have sufficient provision for on-site car parking as required by clause 4.2(b), the developer may choose to approach Council with a written offer to enter into a planning agreement to address this on-site car parking deficiency.
- d) The proportion of car parking spaces that may be provided as a monetary contribution will be reviewed on a merit basis. Consideration will be given to site constraints, the impacts the proposal may have on future site amalgamations in the vicinity, and the achievement of outcomes identified in applicable Area Plans within Council's Development Control Plan, or any Master Plans adopted for the site or locality.
- e) Ensuring that Council's costs of administration are incorporated into planning agreements, for the ongoing monitoring of the agreement, and management of expenditure of the contribution.
- f) The negotiation of a planning agreement between the developer's representative and a Council representative regarding the provision of car parking spaces, does not bind the Council to enter into that agreement or fetter Council's ability to consider the full merits of the development proposal, particularly in regards to matters in addition to car parking provision.
- g) The Council will not use planning agreements for any purpose other than a proper planning purpose.
- h) The Council will not seek benefits under planning agreements that are unrelated to particular development, nor will Council give undue weight to a proposed planning agreement when considering the development proposal.
- i) Where Council has a commercial interest in a proposed development that is the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development.
- j) Council intends to spend money collected under planning agreements on the provision of public car parking facilities, on the improvement of the effectiveness and efficiency of existing public car parking, and where practicable on the provision of public transportation facilities, to reduce the demand for public car parking.

5. Procedures

5.1 General

Section 93F (3) of the Act, specifies what a planning agreement must contain. Following are the further requirements of Council, should a developer choose to negotiate a planning agreement.

5.2 Acceptability Test

Council's officers will use the following test to determine whether the officer will recommend to Council that it enter into a planning agreement for proposed developments with on-site car parking deficiencies.

Where Council officers determine that any of the following questions cannot be answered 'yes', and where an alternate proposal that meets Council's requirements has not been negotiated, Council will not enter into the agreement.

- Is the planning agreement directed towards proper or legitimate planning purposes, having regard to the planning controls and policies applying to development in the Clarence Valley Local Government Area?
- Will the proposed planning agreement likely produce outcomes that meet the values and expectations of the wider Clarence Valley community, and protect the overall public interest?
- Does the proposed planning agreement conform to the intent, principles, and requirements of this Policy?

5.3 Principle and methodology to Calculate Contribution for Car Parking

The basis for calculating and negotiating car parking contributions can be based on one of two (2) main methods.

5.3.1 Method 1 – Extrapolation

That a basis of a per car parking space contribution rate be based on:

- (a) the contribution rates set out in the former pre-amalgamation section 94 car parking contributions plans as they were up until they were rescinded on 15 December 2011; and
- (b) indexing of the respective car parking contributions quantum for each of Grafton central CBD, Grafton peripheral CBD, South Grafton, Maclean CBD area, Yamba CBD area and Iluka CBD area will be required to reflect annual variations to the Consumer Price Index (All Groups Index) for Sydney as provided by the Australian Bureau of Statistics.

Note: Refer to Attachment 2 for the applicable contribution rates under pre-amalgamation section 94 car parking contributions plans as they were up until they were rescinded on 15 December 2011.

5.3.2 Method 2 – Based on current cost of land acquisition and construction

Determination of the current cost to Council for the provision of car parking, by conducting contemporary assessments of land valuations and indicative construction cost estimates for the provision of car parking.

5.4 Procedures for negotiating and entering into planning agreements

The procedure used by Council for entering into and negotiating planning agreements is outlined in the Table below.

Stage	Step/procedure
1. VPA proposed and negotiated	<ul style="list-style-type: none"> • Applicant offers to enter into VPA as part of DA • DA, with VPA proposal, assessed and reported to Council for determination • Notice of Determination issued (with conditions and advice regarding VPA)
2. VPA prepared and reviewed	<ul style="list-style-type: none"> • Drafting of the VPA by applicant (using supplied template) and submission of draft VPA to Council • Internal review of draft VPA by Council staff • Final draft VPA returned to the Applicant for review/approval including advice that Applicant should obtain independent legal advice and outline fees
3. VPA advertised	<ul style="list-style-type: none"> • Applicant is to confirm in writing acceptance of the terms of the VPA and also payment of the associated fees outlined in Council's previous correspondence • Advertising of the proposed VPA in accordance with the <i>EP & A Act and Regulations</i> of the proposed days for exhibition • Assessment of submissions to VPA by Council staff and reporting to Council, if required
4. VPA signed and filed	<ul style="list-style-type: none"> • Arrangements made for signing of the VPA by all parties • A copy of the signed VPA is provided to the Applicant • A copy of the signed VPA is provided to the Department of Planning and Environment, if required
5. VPA executed and monitored	<ul style="list-style-type: none"> • Applicant to arrange for VPA to be registered on the title of the land, if required, and demonstrate to Council it has been registered • VPA to be executed in accordance with the terms of the agreement, e.g. contributions to be paid by timing specified in VPA • VPA is monitored by Council and enforced as and when necessary

5.5 Payment of Development Contributions

The developer will pay the development contribution to Council, indexed as per clause 5.3.1, and in Australian dollars, prior to the issue of the first Construction Certificate or Subdivision Certificate for the proposed development, whichever occurs first.

5.6 Expenditure of Contributions

The development contribution made to Council will be used for the provision of public facilities, being for public car parking and/or public transportation facilities that service or are in the vicinity of the development or within the same precinct that the development is proposed in.

5.7 Costs associated with the Agreement

The developer will pay its own costs, as well as Council's costs in connection with the:

- negotiation, preparation and execution of a planning agreement,
- advertising[#] and exhibition of a planning agreement in accordance with the Act,
- registration of a planning agreement where required, and
- on going administration of the agreement including monitoring and enforcement

[#] - advertising costs as adopted in Council's Fees and Charges applicable at the time.

5.8 Notations on land title

Section 93H of the Act permits a planning agreement to be registered on the title of the land to which the planning agreement relates if each person with an interest in the land agrees to its registration.

In this regard, Council may require a planning agreement to contain a provision requiring the developer to agree to the registration of the agreement on the title of the land. The cost of the registration of the planning agreement will be borne by the developer.

5.9 Assignment and dealings by the developer

Council will not require every planning agreement to provide that the developer may not assign its rights or obligations under the agreement nor have any dealing in relation to the land the subject of the agreement unless:

- The agreement is registered on the title of the land, and
- Where the developer intends to assign the agreement, the developer has beforehand, given to Council notice of the intended assignment, and delivered to Council a copy of the document between the developer and the proposed assignee evidencing the assignment prior to the date of the assignment, and
- The developer is not in breach of the agreement.

6. Attachments

Attachment 1 – Matters that planning agreement policies and procedures; addressing the Department of Planning and Environment’s Development Contributions Practice Note

The Department of Planning and Environment’s Development Contributions Practice Note suggests that policies and procedures concerning their use of planning agreement should set out a number of matters as specified below. Attachment 1 makes a statement of how this policy addresses such matters.

The circumstances in which Council would ordinarily consider entering into a planning agreement

Refer to clause 4.2(c).

The matters ordinarily covered by a planning agreement

As a minimum a planning agreement must provide for the matters set out in section 93F (3) of the Act. A planning agreement may contain other provisions that may be necessary or desirable in particular cases, except where it seeks to:

- *impose an obligation on a planning authority to grant development consent or to exercise a function under the EP&A Act in relation to a change to an environmental planning instrument.*
- *authorise anything to be done in breach of the EP&A Act, or an environmental planning instrument or a development consent applying to the land to which the agreement applies.*

The form of development contributions ordinarily sought under a planning agreement

Development contributions under a planning agreement can be monetary contributions, the dedication of land free of cost, any other material public benefit, or any combination of them, to be used for or applied towards a public purpose. The provision of public car parking facilities is considered to be a public purpose.

Note: section 93F (3) of the Act defines public purpose.

The kinds of public benefits ordinarily sought and, in relation to each kind of benefit, whether it involves a planning benefit

The kinds of public benefits that may be ordinarily sought may include provision of land for a public purpose and the carrying out of works for a public purpose but only on the basis that it can be demonstrated that it involves a planning benefit by confer a net public benefit.

The method for determining the value of public benefits and whether that method involves standard charging

Unless otherwise agreed in a particular case, public benefits will be valued as follows:

Provision of land for a public purpose - the value of the benefit will be determined by an independent valuer who is experienced in valuing land in NSW (and who is acceptable to Council), on the basis of

a scope of work which is prepared by Council. All costs of the independent valuer in carrying out such a valuation will be borne by the developer.

Carrying out of works for a public purpose - the value of the benefit will be determined by an independent quantity surveyor (who is acceptable to Council), on the basis of the estimated value of the completed works being determined using the method that would ordinarily be adopted by a quantity surveyor. Council will prepare the scope of work for the independent quantity surveyor. All costs of the independent quantity surveyor in carrying out the work will be borne by the developer.

Whether money paid under different planning agreements is to be pooled and progressively applied towards the provision of public benefits to which the different agreements relate

Where a proposed planning agreement provides for a monetary contribution by the developer, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements and applied progressively for the different purposes under those agreements.

Pooling may be appropriate to allow public benefit, to be provided in a fair and equitable way but also in a timely manner.

When, how and where public benefits will be provided

When, how and where public benefits will be provided is a matter for negotiation between a developer/developers representative and Council at the development application stage. A public benefit will be provided/delivered often after development consent is granted and sometimes after commencement of development depending on the terms of specific agreement.

A planning agreement will specify how and where a public benefit will be provided in the individual negotiated and agreed circumstances. It is appropriate that specific public benefits negotiated in specific planning agreements be delivered in the locality the subject of the development application. It is acceptable and usual practice to spend money collected via planning agreements for development featuring “car parking deficits” on the provision and/or upgrading of public car parking and associated infrastructure in the locality of the development.

The procedures for negotiating and entering into planning agreements

The Council’s negotiation process for planning agreements aims to be efficient, predictable, transparent and accountable. The policy is structured and drafted such that an offer to enter into a planning agreement can accompany a DA but the preparation, advertising and finalisation of a DA not unnecessarily delay the assessment and final determination of a DA.

Prospective applicants are encouraged, prior to lodgement of their development application, to arrange a Development Management Unit (DMU) meeting with Council’s professional Environment, Development and Regulated Services staff to discuss their proposal.

Note that all costs associated with the negotiation of a planning agreement, including the appointment of an independent person/party, are to be borne by the developer.

Council’s policies on other matters relating to planning agreements, such as their review and modification, the discharging of the developer’s obligations under agreements, the circumstances, if any, in which refunds maybe given, dispute resolution and enforcement mechanisms, and the payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of agreements.

Council does not have any specific policies in relation to planning agreements in respect of the above matters. Individual planning agreements may deal with such matters as negotiated. Council will otherwise be guided by the Department of Planning and Environment’s Development Contributions Practice Note.

Attachment 2 –

Contribution rates under pre-amalgamation section 94 car parking contributions plans as they were up until they were rescinded on 15 December 2011	
<i>Contribution item</i>	<i>Per car space contribution amount - 2011/12 FY</i>
Grafton central CBD	\$8274
Grafton peripheral CBD	\$4963
South Grafton	\$3308
Maclean CBD area	\$14601
Yamba CBD area	\$15631
Iluka CBD area	\$11313