



Woollahra Voluntary Planning Agreement Policy 2020

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1 Preliminary

1.1 About this policy

This document contains Woollahra Council's policy relating to planning agreements which are legally established under the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. The policy only applies to those planning agreements to which the Council is or will be a party.

This policy sets out:

- (a) when and why the Council would consider entering into a planning agreement,
- (b) matters which would normally be provided in a planning agreement,
- (c) the types of development contributions that would be sought under a planning agreement,
- (d) when a contribution will be sought due to the value uplift of land arising from a proposed change to a planning control or a development application that exceeds planning controls,
- (e) the method of calculating contributions, including standard charging,
- (f) the method of calculating the contribution associated with land value capture,
- (g) the pooling of monetary contributions obtained through different planning agreements,
- (h) the delivery of public benefits,
- (i) procedures for negotiating and entering into planning agreements,
- (j) discharging a developer's obligations,
- (k) the monitoring, review and reporting on planning agreements.

1.2 Name of this policy

This policy is called Woollahra Voluntary Planning Agreement Policy 2019.

1.3 Objectives of this policy

The objectives of this policy are:

- (a) To establish the Council's policy on the use of planning agreements.
- (b) To provide a clear and transparent framework for the Council's use of planning agreements.
- (c) To ensure that the negotiation, preparation and implementation of planning agreements occurs in an open, fair, consistent and accountable manner.
- (d) To establish a probity framework for the negotiation, preparation and implementation of planning agreements.
- (e) To facilitate an arrangement which supplements the Council's development contributions system.
- (f) To facilitate flexibility in the provision of public benefits.
- (g) To facilitate the provision of public facilities and actions aligned with a public purpose and in keeping with the Council's corporate planning context.

- (h) To enable the provision of development contributions above those required to address the direct impact of a particular development on neighbouring land and the wider community.
- (i) To establish a method for negotiating planning agreements which allows for development contributions based on the concept of land value capture.

1.4 Land to which this policy applies

This policy applies to all land within the Woollahra Local Government Area.

This policy also applies to land outside the Woollahra LGA in the case of a joint planning agreement between the Council and another council or planning authority that deals with land not within the Woollahra LGA.

1.5 When will this policy be used?

This policy will be used in association with planning agreements, within their meaning under the Act and the Regulation, to which the Council is a party.

1.6 What is a planning agreement?

A planning agreement is defined in section 7.4(1) of the Act as:

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):

- (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.

1.7 Why use a planning agreement?

Planning agreements may be used for a variety of reasons in order to achieve public benefits which are not ordinarily available through the planning and development system or are available in a restricted manner. Planning agreements –

- (a) provide a means for allowing the local community to share in the financial benefit obtained by a developer due to a change in planning controls or a consent to a development application,
- (b) provide a way for the local community to secure public benefits in addition to measures which are required to address the impact of development on private and public lands,
- (c) allow for a flexible means for achieving good development outcomes and targeted public benefits,

- (d) allow opportunities for more innovative and efficient provision of public benefits than might be realised under other means,
- (e) provide opportunities for the local community to participate in the quality and delivery of public benefits,
- (f) allow developers to have an input to the type, quality, timing and location of public benefits.

1.8 When may the Council consider entering into a planning agreement?

The Council may consider entering into a planning agreement where there will be an opportunity or likely requirement for a development contribution -

- (a) when a developer:
 - i. proposes to, or has made a request for a planning proposal seeking a change to Woollahra Local Environmental Plan 2014 to facilitate the carrying out of development, or
 - ii. proposes to, or has made, a development application or an application under section 4.55 of the Act to modify a development consent, or
 - iii. has entered into an agreement with, or is otherwise associated with, a person to whom (i) or (ii) applies, or
- (b) in the circumstances of an offer by a developer as set out in section 7.7(3) of the Act, Section 7.7(3) states in part:

a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a planning agreement that is in the terms of an offer made by the developer in connection with:

 - (a) the development application or application for a complying development certificate, or
 - (b) a change to an environmental planning instrument sought by the developer for the purposes of making the development application or application for a complying development certificate,

Notwithstanding the above, the Council is not obliged to enter into a planning agreement with a developer.

Note: Clause 4.3 of this Policy explains when the Council may consider entering into a planning agreement for the purpose of land value capture.

1.9 Types of development contributions authorised by a planning agreement

Development contributions under a planning agreement can be:

- (a) monetary contributions,
- (b) the dedication of land free of cost,
- (c) any other material public benefit,
- (d) any combination of (a), (b) and (c).

Development contributions will be used for or applied towards a public purpose.

1.10 Principles for using a planning agreement

The Council's involvement in planning agreements is bound by the following principles:

- (a) Foremost, planning decisions will not be bought or sold through planning agreements.
- (b) The Council will never allow planning agreements to fetter the exercise of its statutory functions.
- (c) When considering a written request from an applicant for development consent made under clause 4.6(3) of Woollahra LEP 2014 seeking to justify the contravention of a development standard imposed by that or any other environmental planning instrument, the Council will not give weight to a planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, unless the planning agreement or draft planning agreement is relevant to one or more of the matters the Council is required to consider under clause 4.6(3) (a) or (b) or be satisfied about under clause 4.6(4) of Woollahra LEP 2014.
- (d) The Council will only use planning agreements for a proper planning purpose.
- (e) Council will not seek to negotiate or enter into a planning agreement that offers public benefits that are wholly unrelated to the particular development application or proposed change to Woollahra LEP 2014 which is the subject of the agreement.
- (f) The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering planning agreements.
- (g) The Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements.
- (h) The Council will not seek to negotiate or enter into a planning agreement which has the consequence of rendering a development proposal economically unviable.

1.11 Definitions

In this policy the following definitions apply.

annual report means the report prepared by the Council under section 428 of the *Local Government Act 1993*.

contributions plan means a contributions plan approved under section 7.18 of the Act

Council means Woollahra Council.

corporate strategic planning context includes the community strategic plan, delivery program and operational plan, resourcing strategy, local environmental plan and development contribution plans.

developer means 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 an application under section 4.55 of the Act to modify a development consent, or who has entered into an agreement with or is otherwise associated with such a person.

development has the same meaning referred to in section 4 of the Act.

development application has the same meaning referred to in section 4 of the Act.

development contribution means the payment of a monetary contribution, the dedication of land free of cost or the provision of a material public benefit or any combination of them towards a public purpose.

explanatory note means a written statement prepared in accordance with clause 25E of the Regulation.

land value capture is a public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of the unearned increment to developers in land value increases arising from:

- (a) an amendment to Woollahra LEP 2014 which facilitates development, plus associated or consequential changes to Woollahra DCP 2015, or
- (b) the granting of a development consent or the approval of a modification of a development consent which allows development to exceed the otherwise permissible development controls under Woollahra LEP 2014 or another environmental planning instrument.

material public benefit means a benefit that is not a monetary contribution or the dedication of land, but is for a public purpose. A material public benefit does not need to be a physical work.

Minister means the Minister for Planning and Public Spaces.

planning agreement means a voluntary agreement referred to in section 7.4 of the Act. Section 7.4(1) states:

- (1) 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):
 - (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.

planning benefit means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.

Practice Note means the document titled *Planning Agreements within the Development Contributions Practice Note* issued by the NSW Department of Infrastructure Planning and Natural Resources on 19 July 2005, as may be amended.

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 includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services,

- (b) the provision of (or the recoupment of the cost of providing) affordable housing,
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (e) the monitoring of the planning impacts of development,
- (f) the conservation or enhancement of the natural environment.

(Source: section 7.4(2) of the Act)

residual land value means the value of potential development on a site which may be achieved less all development costs and normal profit.

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

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

VPA Officer means the Council staff member who negotiates or coordinates the negotiation of the planning agreement.

work in kind means a work or action which replaces a monetary contribution in whole or in part.

1.12 Approval and commencement

This policy was approved by Council on xx/xx/xxxx and commenced on xx/xx/xxxx.

1.13 Monitoring, reviewing and reporting

The operation of this policy will be monitored, reviewed and reported to the Council periodically.

2 Policy context

2.1 Legislative framework

This policy and the preparation, content and implementation of planning agreements have regard to and may be governed by:

- (a) the provisions of Subdivision 2 (Planning agreements) of Division 7.1 (Development contributions) of Part 7 (Infrastructure contributions and finance) of the Act,
- (b) the provisions of Division 1A (Planning agreements) of Part 4 (Development contributions) of the Regulation,
- (c) the section titled Planning Agreements within the *Development Contributions Practice Note* issued by the NSW Department of Infrastructure Planning and Natural Resources on 19 July 2005. The Practice Note is made for the purposes of clause 25B(2) of the Regulation.

The practice note is not legally binding. If there is any inconsistency between this policy and the Practice Note, this policy prevails.

Subdivision 2 of Division 7.1 of Part 7 of the Act sets out, amongst other matters:

- the definition of a planning agreement (s.7.4(1))
- the definition of a public purpose (s.7.4(2))
- the mandatory, minimum requirements for a planning agreement (s.7.4(3))
- the relationship of a planning agreement to the application of section 7.11 and section 7.12 of the Act (s.7.4(2, 3A, 5,6))
- the ability of the Council to enter into a joint planning agreement with another council of other public authority (s.7.4(8))
- limitations on the content of a planning agreement (s.7.4(9))

Division 1A of Part 4 of the Regulation sets out, amongst other matters:

- the form and subject matter of planning agreements (cl.25B)
- the signing and commencement of a planning agreement (cl.25C)
- amendment and revocation of a planning agreement (cl.25C)
- public notice requirements, including the timing of that notice in regard to a development application and a planning proposal (cl.25D)
- requirements for an explanatory note and the content of that note (cl.25E)
- requirements for the public inspection of planning agreements (cl.25F, 25G and 25H).

2.2 Development contribution context – relationship of a planning agreement to contribution plans and special infrastructure contributions

This policy forms part of the Council's development contribution system.

The Council may impose a condition of consent to a development application or a complying development application requiring a development contribution under section 7.11 or the payment of a levy under section 7.12 of the Act (if consistent with the relevant contributions plan).

A planning agreement can be used in conjunction with or instead of a contributions plan in several ways. These can allow the Council and a developer to negotiate the delivery of public benefits in a manner that may normally be unavailable in a way a contributions plan allows or requires.

Sections 7.4 and 7.11 of the Act set out the manner in which a planning agreement can influence contributions and levies imposed as conditions of development consent. This includes the ability of a planning agreement to wholly or partly exclude the application of section 7.11 or section 7.12 in respect of a development. However, this can only occur where the Council, as consent authority for the development, or the Minister is a party to the agreement.

Where the Council is the consent authority for development, the exclusion of section 7.11 or section 7.12 through a planning agreement will be a matter of negotiation between the Council and the developer on a case by case basis.

2.3 District plan framework

Planning agreements can assist with the delivery of the directions and planning priorities outlined in the Eastern City District Plan which are set out under the umbrella of four themes drawn down from the Greater Sydney Region Plan – A Metropolis of Three Cities:

1. Infrastructure and collaboration
2. Liveability
3. Productivity
4. Sustainability

Liveability is a particularly important theme because it influences the quality of life that people experience. The creation and renewal of places, neighbourhoods and business centres are central objectives to improving liveability.

Improvements to liveability can occur through a variety of actions including providing:

- local infrastructure
- more and improved public spaces including better use of and access to those spaces
- well-connected places
- people-friendly, workable and safer streets, lanes and pathways that are accessible by people of all ages and abilities

In negotiating planning agreements and establishing the type of public facilities to be included in the agreement, all parties will take into consideration the relevant directions and planning priorities contained in the Eastern City District Plan.

2.4 Integrated planning framework

Planning agreements can also be used to implement the projects, actions and services contained in the Council's integrated planning and reporting framework. The components of this framework are:

- The Community Strategic Plan.
- The combined Delivery Program and Operational Plan.

- A Resourcing Strategy, incorporating the Long Term Financial Plan, Asset Management Strategy and Workforce Management Plan.
- The Annual Report.

The integrated planning framework embraces the community vision and five themes identified in the Community Strategic Plan – *Woollahra 2030 Our community, our place, our plan*. They are:

1. Community well-being
2. Quality places and spaces
3. A healthy environment
4. Local prosperity
5. Community leadership and participation

Some of the things valued by the Woollahra community within these themes are:

Community well-being

- Community facilities, activities and events
- Activities for young people
- Support for healthy aging and activities to engage seniors and isolated people in our community
- Programs and services that are inclusion of people with disabilities
- Quality library services
- A safe community

Quality places and streets

- Retention and enhancement of the village atmosphere throughout the area, offering a good range of shops and services
- Protection of local history, heritage values and buildings
- No inappropriate high rise and oversize development
- Quality design of new developments
- Retention of local urban character
- Sustainable development
- Renewed and upgraded infrastructure, especially footpaths, pedestrian ramps, kerb, guttering, stormwater drainage and local roads
- Reduced traffic congestion
- Improved parking
- Good public transport
- Good access to the city, harbour, beaches and facilities
- Good pedestrian and bicycling access
- Well-managed trees in streets and parks

- Well-maintained foreshores, beaches, parks, sports fields and recreation areas
- Local parks and green open spaces
- Trees and leafy green streetscapes that are well maintained
- Children's play areas and playgrounds
- An environment with less graffiti
- A clean and well maintained environment

A healthy environment

- Environmental monitoring and protection
- Environmentally sustainable initiatives
- Retention of bushland and bush regeneration
- A commitment to sustainable waste management
- Reduced water pollution and improved stormwater drainage
- A commitment to responsible management of biodiversity
- Good street cleaning, recycling and waste collection

Local prosperity

Enhancement and revitalisation of our shopping areas

Community leadership

- Information on Council activities
- Council being responsive to the community
- Opportunities for community engagement and participation and involvement in Council's planning and decision making

There is an important role for planning agreements in facilitating the delivery of actions, projects and services which align with the Council's integrated planning framework and the community's vision and values.

In particular, planning agreements can assist with the delivery of infrastructure in a timely manner. Such infrastructure may be nominated in the Council's Resourcing Strategy, (notably in asset management plans), the Operational Plan, strategic plans, public domain plans or may be identified as a consequence of a planning proposal or development application.

In negotiating planning agreements and establishing the type of public facilities to be included in the agreement, all parties will take into consideration the Council's integrated planning framework and proposed infrastructure which may be identified in the plans and strategies mentioned above.

2.5 Local planning context

The local statutory planning instrument applying to land within the Woollahra LGA is Woollahra Local Environmental Plan 2014.

Woollahra LEP 2014 is used in association with Woollahra Development Control Plan 2015. Changes to Woollahra LEP 2014 may require consequential changes to Woollahra DCP 2015 to facilitate appropriate development of land.

3 Preparing a planning agreement

3.1 Probity

The Council is committed to fairness, equity and ethical behaviour in the care, control and management of the Woollahra LGA and in the administration of this policy. To this end, the following practices will apply:

- (a) Roles and responsibilities within the processes for a planning agreement, a planning proposal and a development application will be managed to ensure transparency, impartiality and accountability and to avoid conflicts of interest. This will generally include separation of roles and responsibilities.
- (b) Commercial and financial information will be treated as confidential material.

Depending on the type of planning agreement and the Council's involvement, the Council may engage a probity expert for advice and assistance with the agreement. Costs associated with this service will be shared between the Council and the other parties associated with the agreement.

3.2 Negotiating a planning agreement

3.2.1 Who will negotiate?

In any planning agreement the Council acts as a regulatory and planning authority and, in most cases, as a stakeholder and asset manager. This policy acknowledges those roles and seeks to separate them in order to ensure probity. Therefore, in negotiating a planning agreement the following arrangements regarding negotiation will be practiced:

- (a) A Council staff member who meets probity requirements, particularly in regard to separation of roles, will be responsible for negotiating or co-ordinating the negotiation of a planning agreement with a developer or their representative. This staff member will be referred to as the VPA Officer.
- (b) Councillors will not participate in negotiations with a developer or their representatives but will have a role in:
 - i. endorsing a draft planning agreement and explanatory note for exhibition purposes,
 - ii. endorsing an offer to enter into a planning agreement,
 - iii. approving a planning agreement.
- (c) Where negotiations occur in regard to land that is not owned by the developer, the written approval of the land owner authorising the developer to act on their behalf must be provided to the Council at the commencement of negotiations. This requirement applies to land which is the subject of the development application or planning proposal and other land which may be part of negotiations.
- (d) The developer is required to disclose all third party interests in the land or lands that are the subject of negotiations. The written consent of those parties must be provided at the commencement of negotiations.

The above negotiation arrangements will also apply to an offer from a developer in regard to a future planning agreement.

3.2.2 When should negotiations commence?

The Council prefers that negotiations for a planning agreement commence before the lodgement of a development application or a request for a planning proposal is made. Negotiations can commence as part of a formal pre-development application or pre-planning proposal meeting.

3.2.3 Reporting and decision making

Throughout the planning agreement process, reports will be provided to committees of the Council and recommendations from those committees will be considered by the Council. Reports will also be presented to the Woollahra Local Planning Panel (LPP), as required by directions issued by the Minister, or to the Sydney Eastern City Planning Panel.

The tables below set out those steps in the process for preparing and approving planning proposals which involve reports to Council committees, decisions of the Council and reports to external planning panels. The tables do not show the full process for preparing a planning agreement.

All committee and Council meetings and meetings of the Woollahra LPP and Sydney Eastern City Planning Panel are open to the public.

Planning proposal with draft planning agreement or offer for a planning agreement		
Step in process	Committee or panel report	Council decision required
Assessment of draft planning agreement and explanatory note or written offer by VPA Officer.	Report to Council committee - VPA Officer reports on draft agreement and explanatory note or written offer.	Yes
Assessment of request for planning proposal by Strategic Planner.	Report to Council committee - Strategic Planner reports on request for planning proposal. Both reports are considered by the same committee and at the same committee meeting. Both recommendations from the committee are considered by the Council at the same time.	Yes
Advice from Woollahra Local Planning Panel on request for planning proposal.	Report to Woollahra LPP - Strategic Planner reports on request for planning proposal.	N/A
Consideration of WLPP advice.	Report to committee - Strategic Planner reports on advice.	Yes

After public exhibition of planning proposal and draft planning agreement or written offer.	Report to committee – VPA Officer reports on exhibition of draft planning agreement or written offer and submissions received.	Yes
	Report to committee – Strategic Planner reports on exhibition of planning proposal and submissions received.	Yes
	Both reports are considered by the same committee and at the same committee meeting. Both recommendations from the committee are considered by the Council at the same time.	

Development application with draft planning agreement or offer for a planning agreement		
Step in process	Committee or panel report	Council decision required
After public exhibition of development application and draft planning agreement or written offer.	Report to committee – VPA Officer reports on exhibition of draft planning agreement or written offer and submissions received. A supplementary report from a Development Control Assessment Officer on the merit of the development application is attached.	Yes
After public exhibition of development application and draft planning agreement or written offer.	Report to Woollahra LPP or Sydney Eastern City Planning Panel as required – Development Control Assessment Officer reports on exhibition and assessment of development application. Council's decision on draft planning agreement or written offer is provided in report to Panel. Relevant conditions of consent are included in recommendation.	N/A

3.3 Who will prepare a planning agreement?

Unless otherwise determined between the parties, the developer will be responsible for drafting the planning agreement or the offer to enter into a planning agreement. This will be confirmed at the outset of negotiations.

The developer must use the Council's template for a planning agreement or the offer. This document will then be provided to the VPA Officer as a draft planning agreement or a draft offer for review. When submitting the planning agreement or offer, the developer must justify any changes to the template.

The explanatory note, which must be exhibited with a planning agreement, is to be prepared jointly by the developer and the VPA Officer.

3.4 Acceptability of a planning agreement

The Council will consider the following matters when determining the acceptability of a planning agreement.

The planning agreement must:

- (a) provide for development contributions which can be used for or applied towards a public purpose,
- (b) satisfy the statutory requirements for planning agreements contained in the Act and the Regulation,
- (c) be directed towards proper or legitimate planning purposes which can be identified from planning controls and other adopted planning policies applying to development,
- (d) produce outcomes that meet the general values and expectations of the public and protect the overall public interest,
- (e) not be put in place outside the planning system to secure contributions that are wholly unrelated to development or that make development unacceptable,
- (f) provide for a reasonable means of achieving the purposes and outcomes of the agreement and securing the benefits sought from the agreement,
- (g) protect the community against unreasonable, adverse environmental impacts,
- (h) satisfy the principles for using a planning agreement contained in this policy,
- (i) be consistent with the Council's integrated planning framework and corporate strategic planning context,
- (j) not be in conflict with another planning agreement applying to the relevant land.

3.5 Acceptability of land to be dedicated

In deciding whether land to be dedicated is acceptable, the Council will consider, where relevant, matters including:

- (a) the monetary value of the land,
- (b) the dimensions, location and topography of the land,
- (c) the current use and improvements on the land,
- (d) factors affecting the usability of the land, including soil condition, accessibility, solar access and relationship with existing public facilities,

- (e) ongoing costs to Council, and
- (f) works proposed to be undertaken by the applicant.

3.6 Acceptability of a material public benefit

In deciding whether a material public benefit is acceptable, the Council will consider, where relevant, matters including:

- (a) the monetary value of the benefit,
- (b) what needs of the community would be satisfied,
- (c) the financial implications for the Council,
- (d) the timing of completion of works or the delivery of the benefit, and
- (e) future recurrent costs associated with the benefit.

3.7 Acceptability of an offer by a developer

Criteria used in clauses 3.4 to 3.6 will also be used in a situation where a developer makes an offer which sets out the terms of a planning agreement and the Council is considering imposing a condition of development consent requiring a planning agreement.

3.8 Amending or revoking a planning agreement

The Council and the developer may negotiate the amendment or revocation of a planning agreement.

A planning agreement may be amended or revoked by a further agreement in writing signed by representatives of the Council and the developer.

An amendment of a planning agreement may need to be negotiated where a development application linked to the agreement is modified under section 4.55 of the Act and the modification has a bearing on development contributions.

Negotiation of an amendment or revocation will be carried out by the VPA Officer.

Amendment or revocation of a planning agreement must follow the statutory requirements contained in the Act and the Regulation. The amendment and revocation will be endorsed by a decision of the Council.

3.9 Valuation of development contribution or offer

The monetary value of a development contribution or an offer by a developer comprising land to be dedicated or a material public benefit is to be determined prior to a draft planning agreement being publicly notified.

The valuation is to be determined by a qualified land valuer in the case of land to be dedicated and a qualified quantity surveyor in the case of a material public benefit.

Where the developer engages a valuer or surveyor to provide the valuations, the Council will engage an independent valuer or surveyor to verify the valuations. The cost is to be borne by the developer.

The developer and the Council may agree that an independent valuer or surveyor, or both, be engaged to provide valuations. Appointment of the agreed valuer or surveyor will be made by the VPA Officer. All costs will be borne by the developer.

3.10 Costs

The costs for preparing, executing, stamping and registering the planning agreement are to be met by the developer.

The Council's costs in negotiating, assessing, reviewing, administering and enforcing the planning agreement will be met in part or full by the developer depending on the circumstances.

The Council's costs may be related to matters and actions including the use of independent consultants, legal advice, notification and advertising, and Council staff preparation and administration time.

The planning agreement will include provision for the payment of costs by the developer and the Council.

Costs incurred by the Council will be payable by the developer at particular stages of the process.

The developer will pay a security deposit as set by the Council's fees and charges for meeting the Council's costs. The security deposit will be paid at the time of submitting the draft planning agreement and explanatory note or the offer.

4 Form and content of a planning agreement

4.1 Statutory requirements

The Act and Regulation set out the statutory requirements governing the form and content of a planning agreement and the mandatory process in its preparation, including steps for public notification and the requirement for explanatory notes. Details contained in the Act and Regulation are supplemented by the Practice Note.

This policy adopts the requirements and processes contained in the Act, the Regulation and the Practice Note.

4.2 Template planning agreement

A planning agreement will be in writing and will be based on the Council's template. The final content of the agreement will be subject to the outcome of negotiations between the responsible Council officer and the developer and any decision of the Council.

Clauses 4.3 to 4.12 explain the Council's policy on certain standard matters that are required in a planning agreement and other matters that may be included depending on the nature of the agreement.

4.3 Land value capture

For the purposes of this policy, land value capture is a public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of the unearned increment to developers in land value increases arising from:

- (a) an amendment to Woollahra LEP 2014 which facilitates development, plus associated or consequential changes to Woollahra DCP 2015, or

- (b) the granting of a development consent or the approval of a modification of a development consent which allows development to exceed the otherwise permissible development controls under Woollahra LEP 2014 or another environmental planning instrument.

Land value capture is distinguishable from development contribution mechanisms under section 7.11 and section 7.12 of the Act. Land value capture focusses on value sharing between the Council on behalf of the community and developers in order to provide public benefits rather than on financing the costs to the Council of addressing particular impacts of development on public facilities.

The Council will seek opportunities to negotiate a planning agreement which includes a land value capture component.

The formula for calculating a monetary contribution associated with value capture has regard to a residual land valuation process and is provided below.

$$C = RLV (2) - RLV (1)$$

$$C^2 = \text{Monetary contribution}$$

$$RLV (2) = \text{Residual land value of a site following:}$$

- (a) a change to a statutory planning control in Woollahra LEP 2014 plus associated or consequential changes to Woollahra DCP 2015, or
- (b) a non-compliance with planning controls which is acceptable to the consent authority,

which in both cases allow intensified development.

$$RLV (1) = \text{Residual land value of a site under the existing Woollahra LEP 2014 and Woollahra DCP 2015 provisions.}$$

The developer will be required to provide the Council with sufficient details, costs and valuations to determine a realistic figure for the residual land values under the existing and altered statutory planning controls. Documentation provided to the Council is to be verified by a certified practicing valuer or a qualified and experienced land economist or both if necessary.

The VPA Officer may engage an independent land economist and other specialists to review information provided by the developer. Costs incurred by the Council will be met by the developer.

Proposed changes to Woollahra LEP 2014 contained in the planning proposal may be amended following the public consultation stage. In that case, further negotiations regarding the land value capture component of the planning agreement may occur having regard to changes in development potential and viability. Consequential amendments to the planning agreement may occur.

In negotiating a planning agreement which includes a land value capture component, the Council may vary the development contribution, including the monetary contribution, having regard to the effect of the contribution on:

- (a) the economic viability of a proposed development on the site,
- (b) the particular attributes, conditions or location of the site,
- (c) the type of a proposed development,
- (d) other circumstances that are identified.

4.4 Timing the delivery of development contributions

A planning agreement will specify the time at which a development contribution must be paid or provided.

Where the planning agreement is associated with a development application, a monetary contribution should be provided prior to an occupation certificate being issued. In other cases, the timing for the payment of a monetary contribution will be negotiated. The delivery of a development contribution other than a monetary contribution will be negotiated with regard to its nature and purpose.

A planning agreement may contain a provision allowing the deferral, periodic payment or staging of a development contribution. In such cases, a provision allowing the adjustment of the contribution value may be included in the agreement.

4.5 Recurrent funding

A planning agreement may include a provision relating to the payment of a monetary contribution towards recurrent costs associated with a public purpose.

4.6 Adjustment of development contributions

A planning agreement which includes the payment to the Council of a monetary contribution under section 7.11 or a levy under section 7.12 of the Act, imposed as a condition of consent to a development application or a complying development application, may include a provision which adopts the indexation of that contribution or levy using the method contained in the relevant Woollahra contributions plan.

A planning agreement which requires a development contribution associated with land value capture will contain a provision which enables the Council to review the value of the contribution at the time it is required to be paid.

4.7 Pooling of development contributions

A planning agreement which requires the payment of a monetary contribution may include a provision which allows money to be pooled with funds obtained from other planning agreements and contributions plans and to be used for public purposes identified in those agreements and plans.

4.8 Implementation of a material public benefit

A planning agreement may include provision for the Council and a developer to enter into a separate contractual arrangement relating to the delivery of a material public benefit.

The Council and the developer will maintain the confidentiality of such an arrangement where sensitive commercial information is involved.

4.9 Security/enforcement of a planning agreement

A planning agreement will include a provision relating to the enforcement of obligations set out in the agreement. An appropriate type of security will be negotiated as part of the planning agreement and will be aligned with the type of contribution such as a monetary contribution, land dedication or a work in kind. The type of security will also be aligned with different circumstances that might apply with the delivery of the particular contribution and the existing and future tenure of land. Types of security may include bonds and bank guarantees and a pre-acquisition agreement in the case of land dedication.

4.10 Dispute resolution

A planning agreement will include a provision for the mediation of disputes. Should it be necessary to enter into dispute resolution, each party will bear their own costs.

4.11 Assignment and dealings by the developer

A planning agreement will include a provision requiring the Council's prior consent to:

- (a) the sale or transfer of the land which is the subject of the agreement,
- (b) the assignment of the developer's rights and obligations under the agreement to a third party, or
- (c) any novation of the agreement.

4.12 Registration of a planning agreement

A planning agreement should include a provision requiring the registration of the agreement on the title of the land to which the agreement applies.

Before the registration occurs, the developer is required to provide written evidence that all persons to whom consent is necessary to register the agreement on the title of the land, including the landowner and other parties with a registered interest in the land, provide their consent for the registration to occur.

The costs of registering the planning agreement on the title of the land are to be borne by the developer.

Registration of a planning agreement ensures that the developer's obligations run with the land to which the agreement relates and binds future landowners.

5 Implementation and management

5.1 Annual report

The Council will provide details in its annual report of all planning agreements that are in force during the year. The details will include particulars of compliance with and the effect of the planning agreements.

5.2 Planning agreement register

The Council will establish and maintain a planning agreement register. The register will:

- (a) contain all planning agreements, with any amendments, that apply to the Woollahra LGA, including those to which the Council is not a party but which have been provided to the Council under the Act
- (b) contain the relevant information required by the Act and the Regulation
- (c) be available for public inspection free of charge during the ordinary office hours of the Council

5.3 Monitoring the planning agreement

Depending on the nature of the agreement and the type of public benefits, Council will monitor the agreement to ensure it is operating effectively and that the developer's obligations are being met.

This may require the developer to report at specified times to the Council.

Where the Council needs to engage experts or other personnel to assist with the monitoring, the costs will be borne by the developer.

5.4 Discharging of developer's obligations

Upon completion of all the developer's obligations in the planning agreement to the Council's satisfaction, Council will upon request provide a letter of discharge to the developer.

Policy Amendments

Date	Responsible Officer	Description