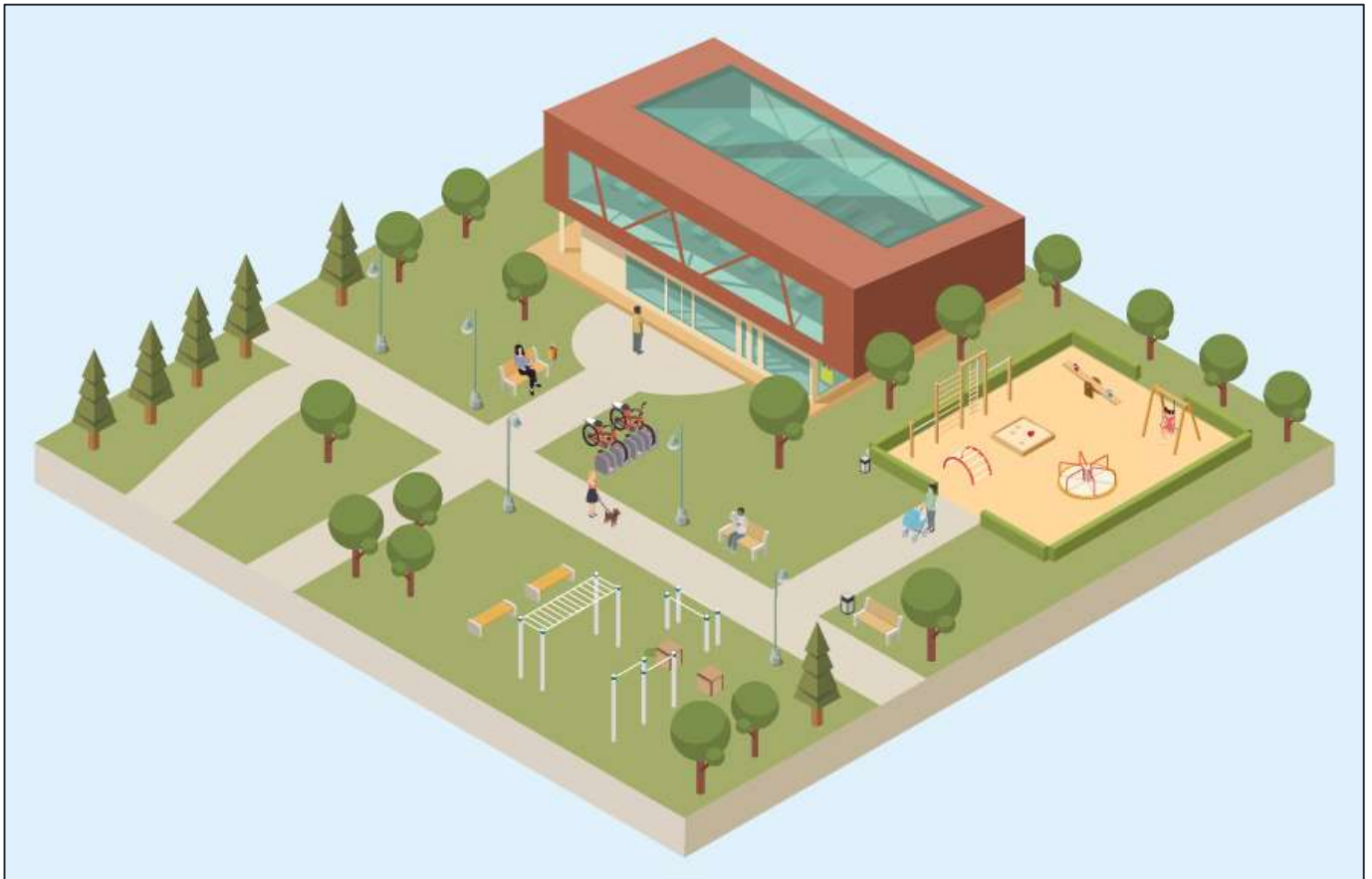



DRAFT FOR EXHIBITION - Local planning agreements

Practice note

December 2023





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past and present through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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More information

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Updates to this practice note

This practice note was first published on XX date and will be periodically updated. It replaces the *Planning agreements practice note 2021*.

Table 1: A summary of updates to this practice note

Edition	Publish date	Updates
First edition	XX Date	-

Terminology

The following terminology is used to convey key concepts across all practice notes:

- **local infrastructure** is the term used to describe the *public amenities and public services*
- **capital costs** is the term used to describe the *provision, extension or augmentation* of the local infrastructure
- **public benefit** is the benefit enjoyed by the public as a consequence of an infrastructure contribution.

Using this practice note

The local infrastructure contributions practice notes are issued by the Planning Secretary for the purposes of sections 211(3) and 203(7) of the Environmental Planning and Assessment Regulation 2021, which require councils to consider practice notes when using contributions plans or planning agreements.

The practice notes have been written primarily to assist councils. Other planning authorities and organisations can consider these practice notes, but they should always refer to the relevant legislation for any additional requirements that may not have been covered.

This practice note should be read in conjunction with the:

- Local infrastructure contributions system practice note
- Administering contributions practice note.

DRAFT

Using planning agreements

Planning agreements are tools that can be used in connection with planning proposals or development applications to deliver innovative or complex infrastructure solutions with public benefit outcomes. Local planning agreements are negotiated and entered into between councils and developers.

Planning agreements can be complex and there is no standard approach. Before starting negotiations, councils should determine that this is the best mechanism to deliver the required infrastructure.

This module is an introduction for councils using a planning agreement.

Legislative requirements

The use of planning agreements is governed by:

- Part 7 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which provides the legislative framework for planning agreements
- Part 9 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation) which provides other procedural matters.

Table 2: A summary of legislative requirements

Summary of planning agreement requirements	EP&A Act section
<p>Planning agreements are voluntary agreements between a planning authority and a developer.</p> <p>They must be related to a development application or application for a complying development certificate, or a change to an environmental planning instrument through a planning proposal.</p> <p>They can require a developer to provide land, monetary contributions or material public benefit to be used or applied towards a public purpose.</p>	<u>7.4 (1)</u>
<p>A public purpose includes:</p> <ul style="list-style-type: none">• providing or recouping the cost of public amenities or services, affordable housing, and transport or other infrastructure• funding recurrent expenditure for providing public amenities or services, affordable housing and transport or other infrastructure	<u>7.4 (2)</u>

Summary of planning agreement requirements	EP&A Act section
<ul style="list-style-type: none"> • monitoring planning impacts of development • conservation or enhancement of the natural environment. 	
Contributions collected under a planning agreement have financial management requirements.	7.3 (1)
A planning agreement cannot exclude the application of section 7.11 or 7.12 contributions unless the relevant consent authority or minister is a party to the agreement.	7.4 (3A)
A planning agreement cannot exclude the application of a housing and productivity contribution without approval from the minister or the designated development corporation.	7.4 (5A)
Councils cannot refuse to grant development consent on the ground that a planning agreement has not been entered into or a developer has not offered to enter into one.	7.7 (2)
A planning agreement can be <u>registered to run with land</u> if the relevant interested parties agree.	7.6

Policy positions

Councils should consider certain principles before entering into a planning agreement

As with the rest of the contributions system, councils should consider the principles of infrastructure contributions concerning planning agreements. There are also specific principles councils should apply when using planning agreements:

- councils should always consider a development proposal on its merits, not based on a planning agreement
- planning agreements should provide for public benefits that have some relationship to the development
- planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls
- value capture should not be the primary purpose of a planning agreement.

Councils may wish to apply additional principles that are relevant to their specific circumstances. These should be detailed in the council's planning agreements policy.

Planning agreements can achieve a number of objectives

The objectives of a planning agreement are usually dictated by the circumstances of each council. As a general guide, planning agreements should be directed towards achieving the following broad objectives:

- meeting the demands created by the development for new or augmented public infrastructure, amenities and services
- securing off-site benefits for the community so that development delivers a net community benefit
- compensating for the loss of or damage to a public amenity, service, resource or asset by development through replacement, substitution, repair or regeneration.

Councils may wish to tailor objectives that are relevant to their circumstances. These should be detailed in the council's [planning agreements policy](#).

Councils should not enter into a planning agreement if it does not meet the acceptability test

Councils should consider the circumstances around each planning agreement and relevant state, regional or local planning policies when determining if a planning agreement is acceptable. Planning agreements should be assessed for acceptability against points **A-E** below. Councils may wish to add additional points to the acceptability test specific to their circumstances. The acceptability test, with any additions, should be detailed in the council's [planning agreements policy](#).

Planning agreements acceptability test

Councils should ensure planning agreements:

- A.** Are directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development.
- B.** Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development.
- C.** Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.
- D.** Provide for a reasonable means of achieving the desired outcomes and securing the benefits.
- E.** Protect the community against adverse planning decisions.

Best practice guidance

Planning agreements can be useful in a variety of circumstances

Planning agreements can be useful tools in many circumstances, for example by:

- providing a framework under which council can share responsibility for the provision of infrastructure in new release areas or urban renewal projects
- permitting tailored governance arrangements and the provision of infrastructure in an efficient, co-operative and coordinated way
- providing enhanced and more flexible infrastructure funding opportunities
- allowing flexible delivery of infrastructure for a development proposal that may have good planning merit but may not have been anticipated in broader strategic planning processes
- providing a means for achieving tailored development outcomes and focused public benefits, including agreement by communities about the redistribution of the costs and benefits of development.

Planning agreements can be used for a wider scope of public purposes than other local contributions

Planning agreements are an efficient way to achieve infrastructure outcomes where other local contributions mechanisms do not have the required flexibility. Planning agreements should complement other local contributions mechanisms and can be used instead of or in addition to section 7.11 contributions or section 7.12 levies.

However, councils should not use planning agreements to avoid planning for funding and delivery of infrastructure. There is a clear legislative, regulatory and policy framework supporting contributions plans that does not apply to planning agreements. Where there is need for public infrastructure across a development area with a range of landowners, a local contributions plan is likely to be the more appropriate mechanism.

There is no requirement to demonstrate nexus

Infrastructure contributions provided in a planning agreement are not required to demonstrate a direct connection (nexus) with development as is required for section 7.11 contributions. However, planning agreements should not provide for public benefits that are wholly unrelated to development.

Planning agreements can include recurrent costs and maintenance payments

Planning agreements may require developers to make contributions towards the recurrent costs of infrastructure. This could be the recurrent costs of items that primarily serve the development to which the planning agreement applies or neighbouring development.

This could also include interim funding of the recurrent costs for infrastructure that will ultimately serve the wider community. The planning agreement would only require the developer to make such contributions until a public revenue stream is established to support the ongoing costs of the facility.

- When it is to serve the wider community, it should only require the developer to make recurrent contributions until a public revenue stream is established to support the ongoing costs.
- When it is primarily to serve the development covered by the planning agreement (or neighbouring development) this can be for a longer agreed time.

Value capture should not be the primary purpose of a planning agreement

Planning agreements should not be used primarily for value capture. For example, they should not be used exclusively to capture land value uplift resulting from rezoning or variations to planning controls. This can lead to the perception that planning decisions can be bought and sold and that councils may leverage their bargaining positions based on their statutory powers.

For each planning agreement, council should consider the development and identify legitimate infrastructure requirements that may be delivered through the agreement to benefit the community.

Councils should consider the role of a planning agreement in a planning proposal or development application

A planning agreement may be one of several matters council considers when determining a development application or planning proposal. Public benefits offered by developers in a planning agreement do not make unacceptable development acceptable. Councils must ensure the community can be confident in the integrity of the final planning decision.

- **Planning proposals** . The EP&A Act requires councils to state the objectives and outcomes of a planning proposal, and to describe and justify the process by which they will be achieved. The role of a planning agreement in facilitating these objectives or outcomes should be set out in the planning proposal documentation.
- **Varying development standards** . Benefits provided under a planning agreement must not be exchanged for a variation from a development standard. Variations to development standards under [clause 4.6 of the Standard Instrument LEP](#) must be justified on planning grounds, and

the benefit under the agreement should contribute to achieving the planning objective of the development standard.

- **Development applications** . Councils are required by the EP&A Act to take into consideration any relevant planning agreement or draft agreement when determining a development application. They are also required to take into consideration any public submissions made in respect of the development application, which may include submissions relating to a planning agreement.
- **Conditions of development consent** . Planning agreements should not be used to require compliance with or restate obligations imposed by conditions of development consent.

Councils should consider land use and infrastructure planning when using planning agreements

Site specific planning proposals may be accompanied by offers to enter into planning agreements. Councils should ensure that the agreement will lead to adequate infrastructure delivery to support the change in planning controls, that the community can be confident in the integrity of the planning decision and that the council is not improperly relying on its statutory role to extract unreasonable contributions.

- Planning agreements should not be used as a substitute for proper infrastructure planning.
- Site specific planning proposals should not be prioritised on the basis that they provide an opportunity for public benefits.
- The public benefits should not be wholly unrelated to the planning proposal.
- Planning agreements related to planning proposals should integrate with a comprehensive approach to infrastructure planning and funding.

Planning agreements related to affordable housing have additional considerations

The Environmental Planning Assessment (Planning Agreements) Direction 2019 sets out the matters to be considered by council if negotiating a planning agreement which provides for affordable housing.

Councils can also collect affordable housing contributions via affordable housing contributions schemes established in their local environmental plans.

Examples

Planning agreements have the potential to be used in a wide variety of planning circumstances. Below are some examples.

Meeting demand created by development

Planning agreements can provide for infrastructure contributions that meet the demand for new public infrastructure, amenities or services generated by development. For example, development may create a demand for public transport, drainage services, public roads, public open space, streetscape and other public domain improvements and community and recreational facilities.

The public benefit provided under the agreement could be the provision, extension or improvement of public infrastructure, amenities and services to meet the additional demand created by the development. An agreement may be used to meet the requirements set out in a contributions plan or to provide infrastructure that meets the demand created by the development in different ways.

Compensation for loss or damage caused by development

Planning agreements can provide for infrastructure contributions that compensate for the increased demand on a public amenity, service, resource or asset that will or is likely to result from carrying out the development. For example, the agreement could replace or restore public open space or public access impacted by development.

Prescribing inclusions in development

Planning agreements can be used to secure the implementation of particular planning policies by requiring development to incorporate particular elements that confer a public benefit.

Examples include agreements that require the provision of public facilities, open space or the retention of urban bushland. Agreements may also require development, in the public interest, to meet aesthetic standards, such as design excellence.

Biodiversity offsetting

A planning agreement may make provisions for the offset of the impact on biodiversity values of a proposed development, including by the retiring biodiversity credits in accordance with section 7.18 of the NSW *Biodiversity Conservation Act 2016*.

Council policies and procedures for planning agreements

Councils are strongly encouraged to publish a planning agreements policy and associated procedures concerning the use of planning agreements. This module provides advice on what this should include.

The planning agreement policy does not need to reproduce the requirements set out in the legislation or the contents of this practice note. It should address how planning agreements will work in the council's specific circumstances.

Legislative requirements

The legislation does not mandate that councils prepare policies and procedures relating to planning agreements. However, councils are strongly encouraged to prepare them to ensure planning agreements are used in a transparent and certain manner, which is important to public interest and the integrity of the planning system. They also help to promote efficiency in the use of planning agreements.

Policy positions

Councils should develop a policy detailing how they will use planning agreements

Planning agreements should be used within a robust policy framework to ensure that all parties have certainty in their application and to prevent the perception that planning decisions are for sale.

Councils should develop a policy detailing how it will use planning agreements. This protects against the misuse of agreements in planning decisions and processes, which may seriously undermine good planning outcomes and public confidence in the planning system. Councils should ensure that planning decisions are made openly, honestly and freely in each specific case, and fairly and consistently across the board.

A council's planning agreements policy should:

1. Demonstrate how the council will consider the principles of infrastructure contributions and principles specific to planning agreements, including any additional principles the council adopts.
2. Demonstrate how the council will determine the acceptability of a planning agreement, including addressing the acceptability test and any council specific additions to it.
3. Outline the council's objectives for using planning agreements.
4. Contain the governance and probity measures the council will implement to protect the public interest and prevent misuse of planning agreements, including:
 - how the regulatory independence of the council will be guaranteed
 - how the council will extend fairness to all parties affected by a planning agreement.
5. Demonstrate how the council will provide for effective, formalised public participation, including notification requirements and any additional consultation.
6. Contain standard templates and procedures on how the council will implement planning agreements.

Councils should address important considerations in the planning agreements policy

The main purpose of a planning agreements policy should be to detail how that particular council will use planning agreements. For example, rather than just restating the principle that a planning agreement won't be used primarily for value capture, a planning agreement policy should also explain how the council will do this.

Councils should address in their planning agreements policy any relevant considerations detailed in the table below.

Table 3: Considerations for a council using planning agreements

Topics to address	Considerations
Strategic planning	<ul style="list-style-type: none"> • How planning agreements would align with any relevant district and regional strategic plans and policies. • How planning agreements would fit within the context of the council's broader strategic planning and land use planning policies, goals, strategies and identified infrastructure needs. • What land use planning and development objectives will be promoted or addressed by the use of planning agreements.
When to use planning agreements	<ul style="list-style-type: none"> • The circumstances in which the council would consider using a planning agreement.

Topics to address	Considerations
	<ul style="list-style-type: none"> • The role served by planning agreements in the infrastructure funding system of the council. • The types of development to which planning agreements will ordinarily apply, and how their use may be differentiated between different types of development. • Whether any thresholds apply to the use of planning agreements.
Procedures for negotiation	<ul style="list-style-type: none"> • The matters ordinarily covered by a planning agreement and council's standard approach for negotiating and entering into a planning agreement. • The kinds of public benefits council would consider. • The council's method for determining the value of public benefits. • How council will monitor the progress of negotiations and resolve delayed negotiations.
Administering planning agreements	<ul style="list-style-type: none"> • Procedures for monitoring planning agreement performance. • How the council would enforce a planning agreement through <u>security</u>. • How the council will address dispute resolution. • How the council will address payment of costs relating to planning agreement preparation and administration.

The planning agreements policy should specifically address governance, conflicts of interest and probity measures

A planning agreements policy should demonstrate how council will ensure planning agreements are in the public interest. Generally, it is in the public interest for controls to be imposed fairly for the benefit of the community. In some cases, the public interest may be best served by mitigating the adverse impacts of development on the public domain or by providing a benefit to the wider community.

Negotiating planning agreements requires discretion on both sides. The negotiation should allow councils and developers to consider different values and varying ideas about public and private interests.

The ability for a planning agreement to exclude the application of other infrastructure contributions gives councils scope to prioritise the items of infrastructure that are most needed. This means that the financial, social and environmental costs and benefits of development can be redistributed through a planning agreement. While this is a key benefit of planning agreements, it also creates the risk that the redistribution won't be in the public interest or consistent over time.

Governance and probity are particularly important for planning agreements because they are a negotiated outcome, so the risk of improper use or undesirable outcomes is greater. For example:

- the interests of individuals or small groups may outweigh the broader public interest
- there may be an imbalance of bargaining power between the council and developer such as a council improperly relying on its statutory position to extract unreasonable public benefits
- a council's ability to make independent decisions may be compromised, or its decisions appear to be fettered by a planning agreement
- a council could have numerous interests in a planning agreement, such as being both the consent authority and also a landowner under the agreement. Safeguards such as the use of an independent third party in the development assessment process would be appropriate in such circumstances.

For further guidance, refer to the [Governance, probity, and internal controls](#) module in the *local infrastructure contributions system practice note*.

Councils should develop procedures and templates for their use of planning agreements

Councils should include a set of clear and accessible procedures and templates in its planning agreements policy that details how the process of negotiating and entering into a planning agreement will work. This will ensure transparency for any potential parties to a planning agreement, as well as create a more efficient system.

Procedures should include

- a step-by-step guide for how the process of negotiating and entering into a planning agreement will work for the council (following the requirements of the legislation)
- council's preference for receiving an offer and any supporting evidence required by council to demonstrate how the offer has been determined
- council's preference on which party to the planning agreement drafts the agreement
- council's preference on which party to the planning agreement drafts the [explanatory note](#)
- council's preference on the timing of developer obligations under a planning agreement and how it will consider discharging obligations
- council's preference for mediation when negotiations fail to deliver an outcome in a reasonable timeframe
- council's preference for securing monetary contributions through a planning agreement

- council's process for approving a planning agreement, such as via a council meeting or delegation
- any relevant procedures or processes needed to further expand the topics covered in the planning agreements policy.

Templates should include

- a standard planning agreement template or standard clauses
- an explanatory note template.

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Negotiating and entering into a planning agreement

Councils should aim to have predictable, transparent, and accountable negotiation systems for planning agreements. This module covers the steps for councils in negotiating and entering into a planning agreement.

Legislative requirements

The process for negotiating and entering into a planning agreement has several steps.

Table 4: A summary of legislative requirements

Requirements for making a planning agreement	Legislation
A planning agreement must be voluntary.	Section 7.4(1) EP&A Act
A planning agreement must include: <ul style="list-style-type: none">• a description of the land it applies to• a description of the planning proposal or development application it applies to• a description of what will be provided, and how and when it will be delivered• whether it excludes or doesn't exclude, the application of section 7.11 contributions or section 7.12 levies• whether it excludes or doesn't exclude the application of the state housing and productivity contribution• what impact the agreement has on determining section 7.11 contributions• dispute resolution processes• how the agreement will be enforced.	Section 7.4(3) EP&A Act
A planning agreement is not entered into until it is signed by all relevant parties.	Section 203(3) EP&A Regulation
An executed planning agreement must be in writing, signed by all relevant parties and published on the NSW Planning Portal and the council's website.	Section 203(1) EP&A Regulation

A planning agreement cannot be included as a condition of consent if no formal offer has been made

A council cannot refuse to grant development consent because the developer did not offer to enter into a planning agreement.

However, if a developer does offer to enter into a planning agreement, the council can require the planning agreement in the terms of the offer as a condition of development consent. Section 7.7 of the EP&A Act details the circumstances in which planning agreements can or cannot be required.

Policy positions

A planning agreement should be negotiated concurrently with the related planning proposal or development application

When possible, the planning agreement should be negotiated between the council and the developer before the related development application is determined or the local environmental plan giving effect to the planning proposal is made.

This will ensure the planning agreement best responds to the development application or planning proposal and allows the plan and the application or proposal to be exhibited alongside each other.

Receiving or making an offer to enter into a planning agreement

While there is no definition for what constitutes an offer in section 7.7(3) of the EP&A Act, an offer should be:

- in writing
- addressed to council
- signed by or on behalf of all parties except the council
- address in sufficient detail:
 - the matters to be included in the planning agreement as required by section 7.4(3) of the EP&A Act
 - matters required by the relevant council in their planning agreement policy and procedures
 - any other key terms and conditions proposed for the planning agreement to allow proper consideration by the council.

Best practice guidance

Councils should implement predictable, transparent and accountable negotiation systems

To ensure transparency and efficiency, councils should outline their negotiation system for planning agreements in their planning agreement policy and procedures.

Before negotiation, the parties should consider whether other planning authorities and other parties associated with the development should be additional parties to the planning agreement, such as the landowner if the landowner is a different person to the developer.

Define a clear scope of negotiation

The scope and intent of the planning agreement should be clear at the beginning of the process for all parties involved. This includes the council and the developer agreeing on the scope of technical studies and infrastructure works required.

Establish an efficient negotiation system

The negotiation system should be based on cooperation, full disclosure, early warnings, and agreed working practices and timetables. Council should detail their preferred approach in their planning agreement policies and procedures so it is transparent and clear.

The planning agreement negotiation process should not delay ordinary planning processes but should run in parallel with them, including any pre-application stages. The negotiation process should not be unduly protracted.

Consider involving independent third parties

Independent third parties can be used in a variety of situations involving planning agreements. Councils and developers are encouraged to make appropriate use of third parties during negotiation, including where:

- an independent assessment of the proposed planning proposal or development application is needed
- factual information requires validation
- sensitive financial or other confidential information must be verified or established in the course of negotiations
- facilitation of complex negotiations is required for large projects or where numerous parties or stakeholders are involved
- dispute resolution is required.

Define a clear dispute resolution path

All parties should agree on how they will resolve disputes that may arise once the planning agreement has been entered into. It can also be useful to have an agreed dispute resolution path defined when negotiating a planning agreement to ensure any disputes can be effectively managed in that process.

Different kinds of dispute resolution mechanisms may suit different situations, and this should be reflected in a planning agreement. For example:

- mediation may be suitable to deal with disputes arising from grievances
- an expert determination may be suitable to resolve disputes of a technical nature
- arbitration may be suitable for resolving commercial disputes.

Consideration of costs and charges when negotiating a planning agreement

Recovering administration costs . Councils and developers should negotiate and agree on costs at the earliest opportunity. Councils can include in the agreement a provision for the costs associated with the negotiation and preparation of the agreement as well as the ongoing administration costs related to monitoring and enforcing the agreement once executed.

Goods and Services Tax (GST) . Both parties to a planning agreement have a potential GST liability and they should obtain advice in every case on whether a potential GST liability attaches to the agreement.

Procedure and process

Indicative steps for entering into a planning agreement

The steps in the table below are provided as general considerations. The exact steps and process will differ for each specific planning agreement and each council.

Table 5: Indicative steps for entering into a planning agreement

Steps	Actions
1 Commencement	<ul style="list-style-type: none">• Consider if the initial offer to enter a planning agreement is in the public interest and meets the <u>acceptability test</u>.• All parties should agree on:<ul style="list-style-type: none">– a negotiation process guided by the council's planning agreements policy and procedures.– the scope of any technical studies to support the planning agreement, and how the studies will be tendered and paid for.

	<ul style="list-style-type: none"> All parties should review the planning agreements practice note, relevant legislation and any council policies to ensure they understand what is required when negotiating a planning agreement.
2 Negotiation	<ul style="list-style-type: none"> Negotiate the planning agreement following the agreed approach. All parties should consider how the planning agreement will be executed and enforced, as this will inform the security provisions and conditions of the agreement.
3 Drafting	<ul style="list-style-type: none"> Draft the planning agreement with legal advice to ensure the provisions are appropriate and will achieve the intent. Formally assess the draft planning agreement against the acceptability test. Prepare the draft planning agreement <u>explanatory note</u>.
4 Application	<ul style="list-style-type: none"> The development application or planning proposal should be accompanied by the draft planning agreement (signed by the developer) and explanatory note.
5 Notification	<ul style="list-style-type: none"> The draft planning agreement and explanatory note are publicly notified, preferably at the same time as the development application or planning proposal.
6 Finalisation	<ul style="list-style-type: none"> Council considers submissions and makes any required changes. If necessary, the amended draft planning agreement may need to be re-notified. Council considers the draft planning agreement and any submissions, alongside the related development application or planning proposal, in an open council meeting to ensure transparency and formally determine how to proceed.
7 Execution	<ul style="list-style-type: none"> If the decision is made to proceed, sign and date the draft planning agreement. The planning agreement is now entered into (executed). This may be before, during or not long after the relevant application or planning proposal is determined.
8 Reporting	<ul style="list-style-type: none"> Publish a copy of the planning agreement and explanatory note on the council's website and the NSW Planning Portal. Continue to report on the status of the planning agreement.



Notifying planning agreements

Public notification of planning agreements helps to ensure negotiations and decisions are transparent and in the public interest. This module provides guidance for councils on the process for public notification.

Legislative requirements

Councils must publicly notify draft planning agreements before they can be finalised and entered into.

Table 6: A summary of legislative requirements

Requirements	Legislation
A draft planning agreement must be publicly notified and available to inspect for a minimum of 28 days before it can be entered into. This requirement also applies when amending or revoking an executed planning agreement.	<u>Section 7.5(1) EP&A Act</u>
Where possible, the public notice should be given at the same time and in the same manner as the notice of the related planning proposal or development application.	<u>Section 204 EP&A Regulation</u>
An explanatory note must be prepared and accompany the draft planning agreement during the notification period.	<u>Section 205 EP&A Regulation</u>

Policy positions

Planning agreements require a clear and simple explanatory note

Planning agreements are legal documents that can be complex and difficult to understand. The explanatory note is used to explain in a simple way what the draft planning agreement is proposing, how it delivers public benefit, and why it is acceptable and in the public interest. The explanatory note should be easy to understand, written in simple language and explain what is in the draft agreement.

By reading an explanatory note, a community member or other stakeholder should be able to understand the draft agreement, the nature of the proposed development or planning proposal, the

public benefits being provided by the agreement and any public impacts (both positive and negative).

A council should detail in its planning agreements policy its preference for who prepares the explanatory note, along with a template. Any of the parties to the agreement can prepare the explanatory note, but it should be reviewed and agreed upon by all parties before use.

The explanatory note should:

- A. Identify how the draft agreement delivers public benefits and is in the public interest.
- B. Summarise the objectives, nature and effect of the draft agreement and contain an assessment of its merits and any impact on the community.
- C. Identify whether the draft agreement conforms with the council's capital works program.
- D. Indicate timing of delivery and include maps, diagrams, and other material to help explain what is proposed.
- E. State whether the draft agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

Any relevant supporting material should also be included

Any relevant supporting documentation should be made available during the notification period along with the explanatory note. This is important to help explain the terms of the draft agreement and its proposed public benefits.

Supporting documentation could include associated technical studies or reports. Such studies may help someone understand the public benefit being provided and make a fully informed decision on the overall proposal.

Significant changes made to a draft agreement following the notification period may need re-notification

A council must determine if any significant changes made to a draft planning agreement following notification could require re-notification. Councils should ensure that decisions on planning agreements are transparent and that the public can see the processes involved.

Re-notification is likely required if the changes materially affect:

- how any of the matters specified in section 7.4 of the EP&A Act are dealt with by the planning agreement
- key terms and conditions of the planning agreement

- council interests or public interests under the planning agreement
- whether a member of the community would have objected to the amended version if it had been publicly notified.

Best practice guidance

Councils should consider making the notification period a formal exhibition

While councils are only required to publicly notify draft planning agreements, the best practice is to treat this notification period as a formal exhibition and accept and consider public submissions. This will ensure greater transparency and probity and provides the community with an opportunity to give feedback on the draft agreement that council can consider when making a decision.

Public participation in the planning agreement process is important to gain community input into decisions about public benefits and development. Planning agreements redistribute the costs and benefits of development, and the public should have a say on whether they think the balance between development and public benefit is being delivered.

For guidance on exhibitions, refer to the [Exhibiting local contributions plans](#) module in the *section 7.11 or 7.12 practice notes*.