



Planning Agreement & Land Dedication Policy

POLICY OBJECTIVE

The objective of this policy is to establish the requirements and process for entering into a Planning Agreement with Goulburn Mulwaree Council.

LEGISLATIVE PROVISIONS

Environmental Planning and Assessment Act 1979 (NSW)
Environmental Planning and Assessment Regulation 2021 (NSW)

RELATED DOCUMENTS

NSW Department of Planning, Industry and Environment Planning Agreements Practice Note 2021

POLICY STATEMENT

Goulburn Mulwaree Council (Council) recognises that voluntary agreements or arrangements, referred to as Planning Agreements under Part 7 Division 7.1 Subdivision 2 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* provide a mechanism for developers to achieve mutually beneficial environmental planning outcomes for themselves and the community when not provided or allowed for under Council's existing planning controls and contribution plan(s).

Furthermore, Council understands that to facilitate growth, strategic direction, public amenity, and community expectations there is a need for land to be dedicated to Council free of cost. Land to be dedicated to Council free of cost can only occur through its identification in a contribution plan or through a Planning Agreement under Section 7.4 EP&A Act authorising its dedication.

1. Introduction

1.1 Overview

This policy includes:

- Council's fundamental principles governing the use of Planning Agreements;
- Circumstances in which Council will consider negotiating a Planning Agreement;
- General requirements and conditions for preparing Planning Agreements;
- Council's policy for the dedication of land; and
- An overview on how to approach Council for a Planning Agreement.

1.2 Disclaimer

Any advice given by Council at any stage when negotiating or submitting a Planning Agreement is considered to be provided on a without prejudice basis. Council accepts no responsibility for the misinterpretation or accuracy of any advice given it is the applicant's sole responsibility to seek clarification.

1.3 Terminology

The following terminology will be used throughout this policy:

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

Associated Development means the development that is associated with a Planning Agreement.

Dedicated land means any land that is proposed to be dedicated free of cost and includes but is not limited to, drainage reserves, parks, environmental conservation, boundary adjustments, land gifted to Council, etc.

Dedicated land does not include land purchased by Council or land compulsory acquired through conveyancing transactions where compensation is provided.

Development Contribution means the kind of provision made by a developer under a Planning Agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material Public Benefit or any combination of the aforementioned to be used towards a public purpose.

Goulburn Mulwaree Contribution Plan means the Goulburn Mulwaree Local Infrastructure Contribution Plan 2021 and Goulburn Mulwaree Development Servicing Plan Goulburn Stormwater;

Instrument Change means a change to an environmental planning instrument to enable a development application to be made to carry out development the subject of a Planning Agreement;

Planning Agreement has the same meaning as in the Act;

Public Benefit means the benefit enjoyed by the public as a consequence of a development contribution;

Public Facilities means public infrastructure, facilities, amenities and services;

Qualified Valuer means either a full member of the Australian Valuers Institute (not an associate or student member), **or** full member of the Australian Property Institute (not a student or provisional member), obtained because of their occupation as a valuer, **or** a full member of the Royal Institution of Chartered Surveyors as a chartered valuer;

Regulation means the *Environmental Planning and Assessment Regulation 2021*; and

Surplus Value means the value of the developer's provision under a Planning Agreement less the sum of the value of public works required to be carried out by the developer under a condition imposed under s4.17 of the Act and the value of Development Contributions that are or could have been required to be made under s7.11 or s7.12 of the Act in respect of the development the subject of the Planning Agreement.

2. General Requirements

2.1 Governing Principles

In assessing Planning Agreements, Council will adhere to the following governing principles:

- a) Planning decisions cannot be bought or sold through Planning Agreements;
- b) Council will negotiate Planning Agreements on a without prejudice basis;
- c) Development that is considered unacceptable on planning grounds will not be permitted regardless of any benefit that may be attained from a Planning Agreement;
- d) Council will not allow Planning Agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act or law;
- e) Council will not use Planning Agreements for any purpose other than a proper planning purpose;

- f) Council will not seek benefits under a Planning Agreement that are unrelated to the Associated Development;
- g) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed Planning Agreement;
- h) Council will not improperly rely on its statutory position in order to extract unreasonable Public Benefits from developers under Planning Agreements;
- i) Where the Council has a commercial stake in development that is the subject of a Planning 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; and
- j) Where the Council has negotiated a Planning Agreement it is not bound in any capacity to enter into the agreement.

2.2 When to Consider a Planning Agreement

Council may consider negotiating a Planning Agreement with the developer to undertake the following public purpose activities in accordance with s7.4 of the Act:

- 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.

2.3 Acceptability Test

Council will determine the acceptability of proposed Planning Agreements using the following test which requires that 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.

2.4 Standard Planning Agreement Template

Council has prepared a draft Standard Planning Agreement Template. This template is a guide to assist in the preparation of a Planning Agreement and contains clauses that Council considers to be mandatory inclusions in all Planning Agreements. Variation to clauses will be the subject of independent legal review and advice before being agreed upon by Council.

The Standard Planning Agreement Template is subject to amendment following the legal review of each proposed Planning Agreement to ensure the template remains current with legislation, planning

principles and best practice. The most up to date template can be found under the policies section of the Council website.

2.5 Clause 4.6 of the *Goulburn Mulwaree Local Environmental Plan 2009*

Planning Agreements cannot be used to justify the application of clause 4.6 of the Goulburn Mulwaree Local Environmental Plan 2009.

2.6 Relation to Existing Contributions Schemes

Planning Agreements will not necessarily exclude the application of Development Contributions under the Goulburn Mulwaree Contribution Plan. The extent to which these contributions apply forms part of the negotiation process. These contributions apply if the proposed Planning Agreement is not considered to provide the equivalent Public Benefit or are not considered to produce a Surplus Value.

2.7 Calculation of Contributions

Council will insist that the calculation of all contributions are:

- a) Consistent with the calculations used in the Goulburn Mulwaree Contribution Plan;
- b) Confirmed by a qualified independent industry professional (such as a Quantity Surveyor);
- c) In the case of acquiring land, the estimated amount of compensation to which the developer would be entitled to under the *Land Acquisition (Just Terms Compensation) Act 1991*;
- d) In the case of seeking use of Council land, a situational land valuation prepared by a qualified valuer. The valuation shall be based on the value of the principal land on which the development would have ordinarily taken place of which the developer will retain more of that land to develop; *and*
- e) As agreed upon by Council.

2.8 Collection and Distribution of Monetary Contributions

The following items relate to the collection and distribution of monetary contributions:

- a) Council does not support deferred payments for contributions that can be implemented immediately;
- b) Council may seek to include a provision permitting any money paid under the agreement to be pooled with money paid under other Planning Agreements or developer contributions. Pooling may be appropriate to stage expenditure and allow Public Benefits, particularly essential infrastructure, to be provided in a fair, equitable and timely way; and
- c) Council may request the inclusion of a provision to make regular Development Contributions towards the recurrent costs of Public Facilities if provided for in the Planning Agreement.

2.9 Credits and Refunds

Council will not consider giving any additional credit or refunds for any contributions considered to have a Surplus Value when compared to what could have been attained under the conditions of development consent.

2.10 Provision of Financial Security

Council may require the developer to furnish Council with an unconditional Australian Bank Guarantee(s) with no maturity date or a cash deposit, with an amount to be determined by Council. This will depend on the nature and scale of capital works being proposed. The bank guarantee must

provide specific reference to the Associated Development including the development application number.

2.11 Fees and Charges

Lodgement, processing, legal fees and any fees associated with maintaining the Planning Agreement may be applicable under Council's fees and charges. Where not already provided for under Council's fees and charges, Council reserves the right to seek full cost recovery for all costs incurred, but not limited to, negotiation, preparation, legal reviews, execution, monitoring and enforcement of any Planning Agreement.

For small land dedications such as a minor boundary adjustments, Council's standard planning agreement template can generally be completed by staff without the need for legal review.

2.12 Plans to be Provided

Whenever plans are to be provided with the Planning Agreement, these plans must:

- a) Be consistent with the plans approved for the Associated Development; and
- b) Be drawn and documented in such a way that any stage or component of the Planning Agreement can be clearly identified and be referred to.

2.13 Implementation

Where it is inappropriate for Council to determine practical completion of works, Council will insist upon the appointment of an independent certifier at the developer's expense. This will require a clause to be created in the Planning Agreement.

2.14 Separation of Roles

The assessing officer of the Associated Development application is not permitted to be the assessing officer of the Planning Agreement. This is to avoid a conflict of interest between Council's role as a statutory planning authority and Council's status as an asset owner and manager.

2.15 Dispute Resolution

Council will exhaust all means it deems necessary to ensure that disputes are resolved prior to any legal proceedings or challenges. The Standard Planning Agreement Template contains several mandatory clauses to this effect.

3. Land Dedication

3.1 Relation to Development

Any and all land dedicated must be demonstrated to have a functional relationship with the proposed development or the function of Council. Council will not accept land that serves no functional purpose or is simply being dedicated because it has no economic development potential and includes land that adjoins land that does serve a functional purpose.

3.2 Relation to the Recreational Needs Strategy

Council will generally not accept any dedication of land for the purpose of open or recreational space unless it can be considered to fulfil a need or recommendation identified in a Recreational Needs Strategy adopted by Council.

3.3 Asset Protection Zone Land

Council will not accept the dedication of land that serves no other functional purpose than being land that functions as an asset protection zone against fire.

3.4 Environmental Conservation

Council will consider the dedication of land for the purpose of long-term biodiversity conservation on a case by case basis. Consideration of dedications of this type must be accompanied by a comprehensive analysis of the land identifying short, mid and long-term obligations on the Council.

The dedication of land for environmental conservation will require the provision of an additional public benefit commensurate with the size and scale of dedication to be provided as Council inherits the land in perpetuity.

3.5 Stormwater Treatment Facilities

The following items relate to the dedication of stormwater treatment facilities and drainage reserves:

- a) Council will seek the full cost recovery for the dedication of all drainage reserves and stormwater treatment facilities;
- b) If stormwater treatment facilities are proposed on land owned by Council, the Council will seek compensation for the land to be used;
- c) Council will seek the present value of future operation and maintenance costs for the facility over a period of 30 years at the discount rate equal to the 30-year Treasury bond rate applicable at the time of Planning Agreement execution;
- d) Council will seek the present value of the future renewal of the facility after an assumed life of 30 years at the discount rate equal to the 30-year Treasury bond rate applicable at the time of Planning Agreement execution;
- e) The dedication of drainage reserves or stormwater treatment facilities will not be considered unless they cannot in the opinion of Council be vested in private ownership or a community management company;
- f) Any land to be dedicated as a drainage reserve or stormwater treatment facility is to be restricted to the minimum amount of land in the opinion of Council that is reasonably required in order to perform its function as a drainage reserve, stormwater treatment facility or any other functional use. This includes land to provide direct vehicular access to the property boundary with a public road. Council will not accept a right of carriageway and or easements that grant access to critical infrastructure; and
- g) The dedication of stormwater treatment facilities to Council will require the provision of an additional public benefit commensurate with the size and scale of dedication to be provided as Council inherits the land and assets for the life of the development.

3.6 Sewer Pumping Stations

Land on which sewer pumping stations are located is to be dedicated to Council Land dedicated must be restricted to no more than the minimum amount of land in the opinion of Council required to carry out maintenance and renewal of assets on the land, and to provide direct vehicular access to the property boundary with a public road. Council will not accept a right of carriageway and or easements that grant access to critical infrastructure.

3.7 Dedication of land

The following items relate to the dedication of land:

- a) Council will seek the present value of the future maintenance costs of any assets that are required to be maintained by Council over a period of 30 years.
- b) Council will seek the present value of the future renewal costs of any asset that Council considers will require renewal or part renewal over a period of 30 years.
- c) Council will seek the present value of any future inspections, reporting or monitoring obligations whether by staff or consultants in managing the dedicated land over a period of 30 years.
- d) Any other cost that may legitimately be required.
- e) The dedication of other land may require the provision of an additional public benefit commensurate with the size and scale of dedication.

3.8 General

Where a cost is to be provided over a period of 30 years a discount rate equal to the 30-year Treasury bond rate applicable at the time of the planning agreement execution shall apply.

Where a 30-year rate is unavailable then a lower rate of 25-year shall apply for the 30 year period.

4. Application Process

4.1 Relationship to Lodging a Development Application

Planning Agreements can be lodged either during or after the lodgement of the Associated Development application. However it is recommended that all Planning Agreements be negotiated prior to this happening, as each Planning Agreement requires a resolution at a Council meeting and a mandatory 28 day exhibition period. The development application and Planning Agreement should be publicly exhibited together where possible.

Council will generally issue the Associated Development with a deferred commencement condition in accordance with s.4.16(3) of the Act, requiring the Planning Agreement to be entered into before the development consent becomes operational.

4.2 Who Negotiates?

Council will nominate a person or persons to negotiate Planning Agreements on behalf of Council, in close consultation with the executive team and other directorates within the organisation. All Planning Agreements will require a Council Resolution to be entered into.

4.3 Summary of Process

The steps below detail the process for negotiating a Planning Agreement. This process has been designed to encourage preliminary consultation with Council in order to avoid costly planning disputes later in the process.

4.3.1 Submit a Summary of the Proposed Planning Agreement

Email Council at council@goulburn.nsw.gov.au with a brief summary of what you intend to achieve with the Planning Agreement prior to submitting a Letter of Offer. Council's planning team will advise if it is appropriate to submit a Letter of Offer or if further discussions should take place first.

4.3.2 Submit the Letter of Offer

The Letter of Offer is the formal request by the applicant to enter into a Planning Agreement with Council. This letter must detail all of the proposed terms of the Planning Agreement, including:

- the costs of the development contributions confirmed by a qualified independent industry expert (such as a Quantity Surveyor);
- all required monetary contributions;
- any dedication of land; and
- the provision of a material Public Benefit.

Furthermore, Letter of Offers must be accompanied by a set of plans as required to support the terms of the proposed offer and be of such detail for Council to extrapolate information to assess maintenance costs and obligations.

4.3.3 Submit the Draft Planning Agreement

After Council has reviewed the Letter of Offer, Council will advise if a Planning Agreement should be pursued in accordance with the Letter of Offer along with any additional amendments to it. The draft Planning Agreement must be lodged during or after the lodgement of the development application. This draft Planning Agreement will be reviewed by the Council negotiation team and Council’s appointed legal advisors, with any changes made as necessary prior to formal endorsement.

| Version | Council Meeting Date | Resolution | Adoption Date | Effective From |
|---|----------------------|------------|-----------------|-----------------|
| 1 | 2 April 2019 | 2019/105 | 2 April 2019 | 3 April 2019 |
| 2 | 18 October 2022 | 2022/375 | 18 October 2022 | 18 October 2022 |
| | | | | |
| All policies can be reviewed or revoked by resolution of Council at anytime. | | | | |

DIRECTORATE: Planning and Environment

BUSINESS UNIT: Planning & Development