

Wagga Wagga City Council

CITY OF WAGGA WAGGA PLANNING AGREEMENTS POLICY

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2	August 2013	Res No: 13/22.1	26 August 2013
3	August 2017	Res No: 2017	28 August 2017

PART 1: INTRODUCTION

This Policy sets out the City of Wagga Wagga's policy and procedures relating to planning agreements under the Environmental Planning and Assessment Act 1979.

1.1 Policy Objectives

The purpose of this Policy is to assist planning authorities, developers, and others in the preparation of planning agreements under s93F of the *Environmental Planning and Assessment Act 1979*, and to understand the role of planning agreements in the planning process.

The purposes of this Policy are:

- (a) to establish a framework governing the use of planning agreements by the Council,
- (b) to ensure that the framework so established is efficient, fair, transparent and accountable,
- (c) to enhance planning flexibility in the Council's area through the use of planning agreements,
- (d) to enhance the range and extent of development contributions made b/y development towards public facilities in the Council's area,
- (e) to set out the Council's specific policies on the use of planning agreements,
- (f) to set out procedures relating to the use of planning agreements within the Council's area.

1.2 Scope of Policy

The Council's strategic objectives with respect to the use of planning agreements include:

- (a) to provide an enhanced and more flexible development contributions system for the Council,
- (b) more particularly, to supplement or replace, as appropriate, the application of s94 and s94A of the Act to development,

- (c) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits,
- (d) to allow the community, through the public participation process under the Act, to agree to the redistribution of the costs and benefits of development in order to realise community preferences for the provision of public benefits, and
- (e) to achieve net planning benefits from development wherever possible and appropriate

1.3 Definitions

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

Council means the Council of the City of Wagga Wagga,

- *development application* has the same meaning as in the Act,
- *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,
- *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 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,
- *public facilities* means public infrastructure, facilities, amenities and services,
- *planning obligation* means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution,

Practice Note means the *Practice Note on Planning Agreements* published by the Department of Infrastructure Planning and Natural Resources (July 2005),

- *public* includes a section of the public,
- *public benefit* is the benefit enjoyed by the public as a consequence of a development contribution,

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

- *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 s80A(1) of the Act and the value of development contributions that are or could have been required to be made under s94 or s94A of the Act in respect of the development the subject of the agreement.

1.4 Legislative Context

Environmental Planning and Assessment Act 1979.

The *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005* introduced Subdivision 2 of Division 4 of Part 6 providing for a statutory system of planning agreements.

It was not intended that the new system preclude other kinds of agreements in the planning process. For this reason, no transitional arrangements have been included in the new legislation. However, other kinds of agreements, whether made before or after the new system comes into force, must comply with the general law.

It was largely because of uncertainty surrounding the application of the general law to agreements in the planning process that the new system of planning agreements was enacted.

Furthermore there is uncertainty about the application of the Goods and Services Tax (GST) to other kinds of agreements. The intention of the planning agreements legislation was to overcome that uncertainty and remove the application of the GST to planning agreements as far as possible. However, independent advice should be sought on the GST implications of entering into any sort of agreement in the planning process and on a case specific basis.

1.5 Related Documents

N/A

1.6 Responsibilities

N/A

1.7 Reporting Requirements

N/A

1.8 Approval Arrangements

Council must approve any amendments to the plan and the agreement must go on public exhibition for 28 days. Any submissions received in relation to the new draft will be considered before Council adopts a final version of the plan.

1.9 Review procedures

To be reviewed annually along with Councils Developer Contributions Plans. Changes to the document will most likely relate to legislative changes or a requirement to change a clause due to it's inflexibility in generating planning agreements for the benefit of the community.