

Ku-ring-gai Council

Planning Agreement Policy 2016

Version Number 2

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Planning Agreement Policy 2016

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Controlled Document Information

Authorisation Details

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Related Document Information, Standards & References

Related Legislation:	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> – Part 4 Development Assessment Division 6 Development Contributions Subdivision 2 Planning Agreements – Sections 93F-93L • <i>Environmental Planning and Assessment Regulation 2000</i> – Part 4 Development contributions Division 1A Planning agreements – Sections 25B-25H • <i>Local Government Act 1993</i> 	The content of and process and procedures for negotiating, exhibiting and executing planning agreements are set out in the Act and Regulation. All planning agreements must meet these requirements.
Related Policies (Council & Internal)	<ul style="list-style-type: none"> • Ku-ring-gai Contributions Plan 2010 • Ku-ring-gai Local Environmental Plan (Local Centres) 2012 • Ku-ring-gai Local Environmental Plan 2015 • Local Centres Development Control Plan • Ku-ring-gai Development Control Plan • Community Strategic Plan • Statement of Business Ethics 	<p>Council's approach to the consideration of planning agreements will be based on the planning purpose of achieving the vision and strategic aims for the Ku-ring-gai area, as set out in the Community Strategic Plan 2030, Local Centres LEP 2012, Ku-ring-gai LEP 2015, Local Centres and Ku-ring-gai DCPs .</p> <p>The Statement of Business Ethics sets out the ethical framework in which Council will work with private, public and non-profit sectors in a business arrangement, such as the negotiation of planning agreements.</p>

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Other References	a) Development Contributions – Practice Note – Department of Infrastructure Planning and Natural Resources issued 19 July 2005	Practice note is to assist planning authorities, developers and others in the preparation of planning agreements and to understand the role of planning agreements in the planning process. The practice note seeks to provide best practice guidance in relation to their use. The practice note is not legally binding.
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Version History

Version Number	Version Start Date	Version End Date	Author	Details and Comments
1	15 July 2008	14 June 2016	Kate Paterson	Ku-ring-gai Planning Agreement Policy 2008
2	15 June 2016	(date version ceased to be in effect)	Kate Paterson Alexandra Plumb	The key governing legislation, being Division 6 of the Environmental Planning and Assessment Act 1979 has not changed and the 2005 Guidelines issued by the Department of Planning remain in place. This review was chiefly to benchmark against more recent examples of best practice in Local Government.

1. Introduction

1.1 Purpose

This Policy provides an overview of the legislative requirements for negotiating planning agreements and the procedures which Council intends to follow in the negotiation of a planning agreement.¹

Planning agreements form one part of Councils development contributions system, which aims to ensure that new development makes reasonable and appropriate contributions towards the provision or improvement of public amenities or services within the Council area.

The purpose of this Policy is:

- a) to guide the preparation and negotiation of planning agreements for the provision of public benefits as part of applications for development and/or rezoning in Ku-ring-gai.
- b) to facilitate the achievement of public benefits such as public domain improvements and community facilities identified in Development Control Plans, Development Contribution Plans and other plans and policies of the Council as part of the development process in Ku-ring-gai.
- c) to facilitate improvements to the street vitality, amenity and economic viability of commercial centres within Ku-ring-gai.

1.2 Objectives

The objectives of this Policy are:

- a) the timely instigation of negotiations between a developer or prospective developer, Ku-ring-gai Council and if required, any other relevant party;
- b) to ensure transparency in the process of negotiating a planning agreement;
- c) to safeguard the public interest with respect to the provision of public benefits; and
- d) the effective and efficient achievement of quality public benefits associated with development

1.3 Application of the Policy

Circumstances in which this Policy may apply include:

- a) where a developer proposes to provide a public benefit as part of the development process whether or not that benefit will be on public or private land and whether or not that benefit is valued by the Contributions Plan.
- b) where Council owned land is proposed to be incorporated as part of any development site other than the direct sale of a parcel of land in its entirety.
- c) any other circumstances where council considers it desirable to have a planning agreement.

¹ Nothing in this Policy is to be taken as superseding or obviating any legislative requirement whether made prior or subsequent to the adoption of this policy; the legislation shall always prevail to the extent of any discrepancy.

1.4 Legislation

The legal and procedural framework for planning agreements is set out in:

- a) *Environmental Planning and Assessment Act 1979* - Part 4 Development Assessment Division 6 Development Contributions Subdivision 2 Planning Agreements – Clauses 93F-93L
- b) *Environmental Planning and Assessment Regulation 2000* - Division 1A Planning Agreements – Clauses 25B25H

The Practice Note “Planning Agreements” (19 July 2005) has been issued by the then Department of Infrastructure Planning and Natural Resources for the purposes of Clause 25B of the Regulation. This Policy has been prepared having regard to the Practice Note.

1.5 Relationship to other Plans and Policies

The following documents apply to the negotiation of a planning agreement:

- a) Ku-ring-gai Contributions Plan 2010
- b) Community Strategic Plan 2030
- c) Ku-ring-gai Local Environmental Plan (Local Centres) 2012
- d) Ku-ring-gai Local Environmental Plan 2015
- e) Ku-ring-gai Local Centres Development Control Plan
- f) Ku-ring-gai Development Control Plan
- g) Any other plans and policies as determined in the circumstances of the planning agreement

Council’s approach to the consideration of planning agreements will be based on the planning purpose of achieving the vision and strategic aims for the Ku-ring-gai area, as set out in the Community Strategic Plan 2030, Local Centres LEP 2012, Ku-ring-gai LEP 2015, Local Centres and Ku-ring-gai DCPs and other key Council documents.

Planning agreements are one mechanism Ku-ring-gai Council intends to use to implement the public domain works and community infrastructure associated with the Local Centres and Ku-ring-gai Development Control Plans, to implement the Contributions Plan and to assist in the orderly development of Council owned land.

1.6 Variations to the Policy

It is intended that the Council and all person dealing with the Council in relating to planning agreements will follow this Policy to the fullest extent possible.

Variations to this Policy may be permissible, if in the opinion of Council, the objectives of the Policy have been met. A written statement and any other supporting information that details how this has been achieved must be provided to Council.

2. Definitions

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

Affordable Housing has the same meaning as in the Act.

Consent Authority means Ku-ring-gai Council, its heirs or successors, or any public body or panel which may be authorised to exercise the particular local government functions in respect of the land on which the planning agreement is proposed to be made.

Developer means a person who has sought a change to an environmental planning instrument or who has made, or proposes to make, an application for development consent.

Development Application has the same meaning as in the Act.

Development Contribution means the payment of a monetary contribution, the dedication of land, the carrying out of a work-in-kind, the provision of a material public benefit or any combination of the above in part or full satisfaction of a requirement occasioned by an application to develop land.

Explanatory Note means a written statement associated with a draft planning agreement in accordance with Clause 35E of the Regulation.

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.

Material Public Benefit means a work not identified in or valued by a Development Contributions Plan and proposed to be offset against any development contributions required as a consequence of the development of a site.

Planning Authority means Ku-ring-gai Council, its heirs or successors, or any public body which may be authorised to exercise the particular local government functions in respect of the land on which the planning agreement is proposed to be made.

Planning Agreement means a agreement negotiated and made in accordance with the *Environmental Planning and Assessment Act 1979* (Part 4 Development Assessment Division 6 Development Contributions Subdivision 2 Planning Agreements) and the *Environmental Planning and Assessment Regulation 2000* (Part 4 Development Contributions Division 1A Planning Agreements).

Planning Benefit means a development contribution that confers a net public benefit being a benefit that exceeds anything required to be done to address the impacts of a particular development on surrounding land or the wider community.

Public means a section of the public.

Public Benefit means a facility or work which provides a direct benefit to the public beyond the inhabitants of the proposed development.

Public Facilities means public infrastructure, facilities, amenities or services.

Public Domain means any area outside the private domain.

Public Purpose means the provision of, or recoupment of the costs of providing public amenities and public services, affordable housing, transport or other infrastructure and may include recurrent expenditure, the costs of monitoring impacts of a development, the conservation or enhancement or the natural environment and any like purpose.

Regulations mean the *Environmental Planning and Assessment Regulations 2000*.

Works in Kind means a work identified in and valued by a Development Contributions Plan and proposed to be offset against monetary contributions.

3. What must a planning agreement contain?

3.1 Mandatory inclusions

A planning agreement must be in writing and signed by all of the parties to the agreement. A planning agreement is not entered into until it is signed. The *Environmental Planning and Assessment Act 1979* requires planning agreements to include provisions specifying:

- a) a description of the land to which the agreement applies,
- b) a description of the change to the environmental planning instrument to which the agreement applies or the development to which the agreement applies,
- c) the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
- d) in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development
- e) if the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94
- f) a mechanism for the resolution of disputes under the agreement,
- g) the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

A template for a planning agreement can be found at **Attachment A**.

3.2 Explanatory note

Clause 25E(1) of the Regulation requires that an explanatory notes must accompany a VPA that:

- a) Summarises the objectives, nature and effect of the proposed VPA, amendment or revocation, and
- b) Contains an assessment of the merits of the proposed VPA, an amendment or revocation include the impact (positive or negative) on the public or any relevant section of the public.

A sample explanatory note can be found at **Attachment B**.

3.3 General inclusions

Ku-ring-gai Council may require a planning agreement to include additional provisions such as:

- the date or circumstances at which times a planning agreement may come into effect
- the application of the goods and services tax to the agreement
- whether money contributed under a planning agreement may be pooled with other money from planning agreements and/or monetary development contributions and paid progressively towards for the purposes for which the money has been levied
- the circumstances in which a developers obligations may be modified which may include material changes to the planning controls applying to the land, material changes to the development consent applying to the land, the lapsing of a development consent, the revocation or modification of a relevant development consent by the Minister, or other material changes affecting the operations of the planning agreement
- the circumstances in which a developers obligations shall be considered to be discharged
- the procedure for modifying a planning agreement
- clauses related to the specific nature of the land dedication, monetary contributions, recurrent funding, material public benefits or works of the types listed in Part 5 of this policy
- any other clauses as may be required in the circumstances of the negotiation

3.4 Other inclusions

The *Environmental Planning and Assessment Act 1979* does not preclude a planning agreement from containing other provisions that may be necessary or desirable in the circumstances of the cases with the exception of the specified exclusions in 3.5 and 3.6 below.

Planning agreements may be used in a wide variety of circumstances and achieve a variety of planning outcomes. Accordingly, it is not appropriate for Ku-ring-gai Council to seek to limit the potential scope of a planning agreement in this context.

More detail on the types of considerations that would be incorporated in planning agreements for different purposes are listed in Part 5 of this Policy.

3.5 No fetter

Section 93F(9) of the Act precludes a planning agreement from imposing an obligation on a planning authority to grant development consent or to exercise a function under the Act in relation to a change to an environmental planning instrument.

3.6 Breach of the Act

Section 93F(10) of the Act provides that a planning agreement is void to the extent, if any, to which it authorises anything to be done in breach of the Act or any environmental planning instrument or development consent applying to the land to which the agreement applies.

4. Principals underlying the use of planning agreements

4.1 Fundamental principals

Ku-ring-gai Councils use of and participation in planning agreements will be guided by the fundamental principles set out in the Practice Note, guidelines and safeguards as follows:

- planning decisions cannot be bought or sold and therefore there can be no fetter on a planning authority in the exercise of their planning functions.
- planning agreements must be voluntary on both sides. No party can be compelled to enter into a planning agreement.
- public interest is paramount in the negotiation of a planning agreement
- the need for transparency including the opportunity for public comment on draft planning agreements.
- Council will not seek benefits under a planning agreement that are unrelated to that particular development.
- planning agreements will not be used to engage in revenue raising or to overcome particular spending limitations.
- the benefits offered by a developer will not render an otherwise unacceptable development in planning terms, anything other than unacceptable unless the purpose of the benefits is to directly mitigate an unacceptable impact e.g. traffic generation, emissions, etc.
- Council not allow the interest of individuals or an interest group to outweigh the public interest when considering planning agreements.
- Council will not improperly rely on its statutory position to exact unreasonable public benefits
- where Council has a commercial stake in a development that is the subject of a planning agreement, it will take steps to ensure it avoids a conflict of interest in the development.

4.2 Acceptability test

The Practice Note sets out the following test for determining whether a planning agreement is acceptable and appropriate. Ku-ring-gai Council will apply the test to all planning agreements:

- is the proposed planning agreement directed towards a proper or legitimate planning purpose ordinarily ascertainable from the statutory planning controls and other adopted planning policy applying to the development and the circumstances of the case?
- does the proposed planning agreement provide for public benefits that bear a relationship with the development?
- will the proposed planning agreement produce outcomes that meet the general values and expectation of the public and protect the overall public interest?
- does the planning agreement provide for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits?
- does the planning agreement protect the community against planning harm?

4.3 Relationship between planning agreements and Clause 4.6

The benefits proposed by a developer under a planning agreement cannot be used to justify a dispensation with or a variation to an applicable development standard (such as building height, floorspace ratio, and minimum lot size) under Clause 4.6 Exceptions to Development Standards of Ku-ring-gai Local Environmental Plan (Local Centres) 2012 and Ku-ring-gai Local Environmental Plan 2015.

5. Planning Agreements

5.1 When is a planning agreement required?

The circumstances in which Ku-ring-gai Council would consider negotiating a planning agreement with a developer include:

- a) meeting the demands created by the development for new public infrastructure, amenities and services
- b) compensating for the loss of or change to a public facility, amenity or service, resource or asset
- c) securing planning benefits for the wider community so that the development delivers a net benefit to the community
- d) achieving benefits of a type that cannot be sought through formal contributions plans such as recurrent funding, affordable housing, regeneration or rehabilitation of bushland and the like
- e) achieving works which were excluded from contributions plans for the purpose of achieving a reasonable contributions rate
- f) clarifying the relationship between development contributions under an adopted contributions plan and the works to be provided on any given development site
- g) specifying the standards to be met in the provisions of works in kind or the provisions of a material public benefit

Ku-ring-gai Council requires developers to commence negotiation of a planning agreement where there is any proposal to dedicate land and/or carry out works-in-kind included in a Development Contributions Plan and/or provide a material public benefit whether or not it is of the kind identified in a Development Control Plan.

5.2 What will Council require to be provided under planning agreements?

Council will consider development contributions that provide a demonstrable public benefits. An outline of the potential public benefits is set out in the Potential Public Benefits table at **Attachment C**. **Attachment C** is not intended to be exhaustive, and recognises that the consideration of each proposed development will reflect the circumstances of each case and the needs created by the scale of the development. The types of benefits that generally could be included in a planning agreement are:

- a) land dedication
- b) works of the type that appear in the works schedules of Councils adopted Contributions Plan
- c) public domain works in the Local Centres Development Control Plan and Ku-ring-gai Development Control Plan
- d) monetary contributions
- e) affordable housing
- f) recurrent funding for a public purpose
- g) bushland regeneration

The following provides detailed information on different types of public benefits that may be provided under a planning agreement.

5.2.1 Land dedication and planning agreements

A planning agreement may make provision for the dedication of land. In the case of land identified within a Contributions Plan, the estimated value of land that is identified in that Contributions Plan will be given due consideration. This consideration is essential as the initial estimated value contributed to determining the contribution rates. However, there are other matters that may impact on the agreed value of land.

In all cases, the agreed value of a particular parcel of land will be negotiated as part of the planning agreement. Council will employ a registered valuer and will instruct that person to take into account the unique characteristics of the property and the circumstances of the dedicated which may include:

- a) the extent, if any, to which any development potential attaching to that part of the land to be dedicated can be incorporated elsewhere within the development;
- b) whether the land proposed to be dedicated has been identified by Ku-ring-gai Council in any Development Control Plan, Development Contributions Plan or other policy of the Council;
- c) the location, configuration, size, accessibility, topography and existing use of the land proposed to be dedicated;
- d) whether the land is located in or adjacent to a riparian corridor or bushfire prone land;

- e) whether the land adjoins an existing area of open space and can be consolidated into that area;
- f) whether the land will create or improve accessibility within the area whether by pedestrians, cyclists, private vehicles, public transport or any combination of these;
- g) whether the land supports the habitat of threatened or endangered species of fauna or endangered ecological communities of flora;
- h) any factors which may affect the usability of the land such as soil condition, flood liability, potential site contamination, public accessibility and safety, proximity to existing uses, the current use of the land, the cost of embellishment or construction of any proposed facility on the land;
- i) the potential to carry out works within a reasonable time and, as a consequence, any measures required to secure or maintain the land in the event that works cannot be carried out for some time;
- j) in the case of a material public benefit not anticipated by a Contributions Plan and proposed to be offset against monetary contributions, the impact on the achievement of works identified within any adopted Contributions Plan of Council;
- k) the on-going costs to the Council of care, control and management both prior to and after any improvement works are carried out on the land;
- l) any other relevant matter in the circumstances of the case.

Where a planning agreement relates to the acquisition, transfer or disposal of land valued in accordance with the criteria above, the planning agreement will include:

- a) particulars to identify the land to be dedicated or a plan of subdivision;
- b) the dimensions, location and characteristics of the land to be dedicated;
- c) either the agreed value of the dedication or the conditions and/or requirements that will be deemed to be satisfied by the dedication; and
- d) the date at which the transfer of ownership will take place or the threshold which will trigger the requirement to transfer ownership of the land.

Following execution of a planning agreement, the agreed value will be as per the planning agreement regardless of any subsequent change in land value including a change in value between the execution of the planning agreement and the transfer of land ownership. If a planning agreement provides that a specified land dedication satisfies a required contribution or consent condition without specifying a land value that agreement will stand regardless of whether relative changes in land value or contribution rates alter the value of that agreement to either party unless the planning agreement is formally amended by mutual agreement.

5.2.2 Capital works and planning agreements

A planning agreement may make provision for a developer to carry out work on land to be dedicated and/or in the public domain. Council will instruct a qualified quantity surveyor to verify all cost estimates submitted by the developer as part of the negotiation process. The planning agreement will specify the particulars of the work and the procedure for satisfying any requirements in carrying out of the work,

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taking into account the unique characteristics of the property and the circumstances of the work which may include:

- requirements and specifications for detailed design plans for future approval or specific references to endorsed plans;
- public liability insurance during construction and during the defects liability period;
- requirements for inspection by Council prior to and during the course of construction including the notice to be given in order to arrange such an inspection;
- details of the defects liability period;
- security such as bonds or bank guarantees to be held during the course of construction and during the defects liability period;
- access for Council officers during the course of construction to ascertain progress or to assess asset value; and
- any other matter relevant to securing the public interest in the achievement of a quality public benefit.

5.2.3 Monetary contributions and planning agreements

A planning agreement may make provision for monetary contributions other than contribution required under an adopted and in force Section 94 or 94A Development Contributions Plan. In such circumstances the planning agreement will include:

- the amount of the monetary contribution;
- the purpose and extent of the monetary contribution;
- when such contributions are to be paid;
- in the case of staged payment, the nature of the staging or the dates or thresholds at which times payments are to be made;
- any mechanism for the inflation of the monetary contribution until such time as it becomes due and payable;
- circumstances in which contribution would be renegotiated or revoked;
- the obligations of Council to expend the monetary contributions;
- in the case of contributions that require additional funding from Council and/or other sources in order to achieve the ultimate objective, the process for managing and accounting for the contributions until such time as they can be expended including the investment of the contributions and the treatment of interest; and
- any other matters relevant to the securing of public interest in the management and expenditure of additional monetary contributions.

Monetary contributions required by a standards condition of consent in accordance with an adopted contributions plan will not normally be specifically referenced in a planning agreement, except to the extent that the planning agreement must clarify the relationship of the planning agreement to any contributions which may be required as a consequence of granting a consent on the land to which the planning agreement will apply.

5.2.4 Recurrent costs and planning agreements

A planning agreement may make provisions for the funding of recurrent costs associated with a public benefit. In such circumstances the planning agreement will include:

- the specific purpose of the recurrent funding;
- the nature and extent of the recurrent funding;
- the time period over which the funding shall be provided;
- any mechanism for the inflation of the recurrent funding;
- the heads of consideration for any endowment fund or trust that may be required to be established to manage the recurrent funding;
- circumstances in which funding would be renegotiated or revoked; and
- any other matters relevant to the securing of the public interest in the achievement of an on-going public benefit.

5.2.5 Affordable housing and planning agreements

A planning agreement may make provision for the development and future management of affordable housing. In such circumstances the planning agreement will include:

- a definition of affordable housing for the purposes of the planning agreement;
- if not in perpetuity or the life of the construction then the time period over which such housing is to meet the definition of affordable housing;
- provisions for the future management of the affordable housing;
- criteria for assessment of future tenants of reference to another policy of the Council which specifies such criteria;
- the mechanism for ensuring the housing remains available as affordable housing;
- any other matters relevant to securing the public interest in the achievement of affordable housing.

5.2.6 Other matters for planning agreements – Bushland

A planning agreement may make provision for the rehabilitation, restoration, regeneration and/or conservation of any natural areas. In such circumstances the planning agreement will include:

- a description of the site including location, configuration, size, accessibility, topography and existing land uses;
- the nature and extent of the works to be carried out;
- a map of the site identifying the area where the works are to be carried out;
- an assessment of the ecological value of the site in the context of the proposed works;
- reference to a plan of management for the proposed works (initial and on-going);
- reference to a Species Impact Statement if necessary in the circumstances of the matter;
- the mechanism by which the land will be protected in the future; and
- any other matter relevant to securing the public interest in the achievement of natural area management.

6. Negotiation Procedures and Probity

6.1 Steps in the negotiation process

Councils negotiation of planning agreement aims to be efficient and transparent. The negotiation of a planning agreement will generally involve the following key steps:

- a) Prior to the lodgement of the relevant application (development application or planning proposal), the developer approaches Council with a letter outlining the nature of the offer to be made by way of planning agreement. The initial point of contact to discuss a planning agreement with Council will be Infrastructure Coordinator.
- b) Councillors will be notified that a letter of offer has been received.
- c) The parties will consider whether there are other parties that should be involved (e.g. owner of land if the developer is not the owner) and whether to appoint an independent person to facilitate or otherwise participate in the negotiations.
- d) A timetable for negotiations and the protocols and work practices governing the negotiations will be agreed between the parties.
- e) Initial negotiations between the parties take place regarding the items and matters to be addressed in the planning agreement.
- f) Once an agreement is reached, the draft planning agreement will be documented and the parties will agree on the terms of the accompanying explanatory note required by the Regulations.
- g) The developer will lodge an application (development application or planning proposal) to the Council or other relevant authority accompanied by the draft planning agreement and explanatory note. The application must clearly record the offer to enter into a planning agreement.
- h) The draft planning agreement is to be reported to Council and a resolution sought to the effect that public notice of the planning agreement be given for a period of 28 days.

- i) The draft planning agreement and explanatory note will be advertised concurrent with the application (development application or planning proposal) in accordance with the Act and Regulation.
- j) Any person may make a submission on the draft planning agreement and Council is bound to consider the submission.
- k) The parties may be required to undertake further negotiations as a result of the public notification.
- l) At a Council meeting, Council will consider a report on the submissions made during the public notification process and decides by resolution whether or not to enter into and sign the draft planning agreement.
- m) Development Application – Council determines the development application to which the planning agreement relates. If it resolves to approve the application, it will impose appropriate conditions on the consent referring to the agreement and other development contributions affected by the agreement.
- n) Council and the developer execute the planning agreement
- o) The executed planning agreement is then registered on the title of the land the subject of the planning agreement binding all heirs and successors until the discharge of the developers obligations under the planning agreement. Note the planning agreement may contain a clause indicating specific circumstances in which it would become active.

A flow chart of this process is included at **Attachment D**.

6.2 Roles and Responsibilities

Ku-ring-gai Council will delegate the appropriate authority to a Council officer, or group of officers, to negotiate a planning agreement on behalf of Council.

In order to ensure that there is a clear separation of responsibilities in the consideration of Development Applications that involve planning agreements, Council staff who are involved in the assessment of the Development Application, are not to have a role in the assessment of commercial aspects of the planning agreement nor on the conditions of the planning agreement except where advice is required on matters relating to the conditions of consent for a particular proposal.

Councillors will not be involved in the negotiation of a planning agreement as there is a requirement to separate the regulatory powers of Council to ensure probity is maintained in the negotiation process. Councillors will ultimately determine by resolution whether to enter into the planning agreement.

Council may, at its absolute discretion, involve an independent third party to facilitate or participate in the negotiations, particularly in the following circumstances:

- where Council has a commercial interest in the property the subject of a planning agreement
- where the size or complexity of the project or the number of stakeholders is such that the negotiation would benefit from the presence of an independent facilitator
- where sensitive financial or confidential information must be verified or established in the course of negotiations

- for probity reasons
- as part of a dispute resolution

6.3 Probity

Public probity is important to Ku-ring-gai Council and it will seek to ensure that the negotiation of any planning agreement is fair, transparent and directed at achieving public benefits in an appropriate manner free from corruption.

In this regard, Council will:

- inform any developer about Council values and business ethics as set out in Councils *Statement of Business Ethics*, specifically about ethical behaviour appropriate to business dealings. A copy of Councils *Statement of Business Ethics* is included at **Attachment E**.
- ensure any considerations of the planning agreement are consistent with the fundamental principles outlined in Section 4 of this Policy.
- publically notify planning agreements to ensure they are open and transparent, and achieving public awareness of the matters contained in the planning agreement and the potential benefits of an agreement.
- ensure appropriate delegations and the separation of responsibilities in considering development applications that involve planning agreements, specifically the need to ensure processes adequately address the level of risk of corruption of a process.
- ensure that Councillors and Council staff understand their varied roles, some of which have potential to conflict.
- ensure that Council staff involved in planning agreement considerations are free from conflicts of interest.
- ensure that planning agreements are to be negotiated independently of the development application assessment process.
- take every step to ensure conflicts of interest are ameliorated to the greatest extent possible.
- ensure where Council has a commercial stake in development of 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 commercial interest in the development. In this respect, Council shall have regard to its *Statement of Business Ethics* and the publication from the Independent Commission Against Corruption (ICAC) entitled : *Direct Negotiations – Guidelines for managing risks in direct negotiations*.
- if Council has a commercial interest in the subject matter or site of a planning agreement as a landowner, developer or financier, Council will ensure that the Council officer who assesses the application to which the planning agreement relates is not the same person, or a subordinate of the person, who negotiated the planning agreement on behalf of Council.
- ensure that all discussions with a developer and their consultants are sufficiently documented.

7. Notification and Exhibition

Clause 93G(1) of the Act precludes a planning agreement from being entered into, amended or revoked unless public notice is given of the proposed agreement, amendment or revocation. The exhibition must include the draft planning agreement and explanatory note.

Clause 25D(1) of the Regulations requires a draft planning agreement to be exhibited concurrent with a Development Application or application to modify a Environmental Planning Instrument. In order to satisfy this requirement, a prospective applicant needs to notify Council of their intent to negotiate a planning agreement prior to the lodgement of any Development Application or concurrent with any application to modify an Environmental Planning Instrument.

The statutory exhibition period for a draft planning agreement is a minimum of 28 days.

Council encourages the public to make submissions on planning agreements. This will allow Council to better understand local needs and permit fine tuning of the planning obligations set out in the planning agreement.

Following the exhibition of the draft planning agreement, public submissions will be assessed by the Council when it considered whether it should enter the proposed planning agreement.

8. Planning agreements and other planning processes

8.1 Planning agreements and Development Assessment

Section 79C(1)(a) of the Act requires a consent authority to take into consideration any planning agreement entered into, or draft planning agreement proposed to be entered into, by a developer together with any submissions made in response to the exhibition of the planning agreement or draft planning agreement.

Section 93I(2) of the Act precludes a consent authority from refusing to grant consent on the grounds that a planning agreement has not been entered into in relation to the proposed development or that the developer has not offered to enter into a planning agreement.

8.2 Planning agreements and Conditions of Consent

Section 93I(3) of the Act authorises a consent authority to require a planning agreement to be entered into as a condition of a development consent. However, a consent condition can only require a planning agreement if it is in the terms of an offer made by the developers as part of making the development application.

The practical import of this requirement means that the draft planning agreement must be exhibited concurrently with the public notification of the development application. The draft planning agreement must be ready for execution at the time of development consent in order to enable a condition of consent referring to the draft planning agreement to be part of that development consent.

The importance of incorporating the planning agreement within the development consent arises from the need to address potential GST liability otherwise attached to the planning agreement. In view of the complexity of the legislation, specific GST issues will be considered afresh with each and every planning agreement to be negotiated.

8.3 Planning agreements and Contributions Plans

Following the execution of a planning agreement, that planning agreement will then take precedence over any reference in a Contributions Plan, including a subsequent Contributions Plan, adopted by Ku-ring-gai Council.

9. Administration and Implementation

9.1 Preparation of the planning agreement

The developer will prepare a draft planning agreement relating to the particular development application or proposed instrument change. The developer is encouraged to use the standard form, **Attachment A**, as a template for preparing the draft planning agreement.

9.2 Modification or discharge of the developers obligations

Council may agree to a provision in a planning agreement permitting the developers obligations under the agreement to be modified or discharged in the following circumstances:

- a) the developers obligations have been fully carried out in accordance with the agreement
- b) the development consent to which the agreement relates has lapsed
- c) the development consent to which the agreement relates has been modified to such an extent that the planning obligations may not be appropriate
- d) the performance of the planning agreement has been frustrated by an event or events beyond the reasonable control of the parties
- e) other material changes affecting the operation of the planning agreement
- f) the council and the developer otherwise agree to the modification or discharge of the agreement

Such a provision will require the modification or revocation of the planning agreement in accordance with the Act and Regulation.

9.3 Registration of planning agreements (caveats)

Section 93H of the Act permits a planning agreement (or any amendment or revocation of a planning agreement) to be registered on the title of the land to which the planning agreement relates if each person with an interest in the land agrees to its registration. If a planning agreement has been so registered, it is binding on, and enforceable against, the owner of the land as if that owner had entered into the planning agreement.

It is the policy of Ku-ring-gai Council to have all planning agreements registered on the title of the land until the responsibilities listed therein have been discharged. The cost of the registration shall be borne by the developer.

Council may also make notation under s149(5) of the Act about a planning agreement on any certificate issued under s149(2) of the Act relating to the land which is the subject of a planning agreement whether or not the planning agreement has been registered on the title of the land.

9.4 Land and Environment Court

Section 93J(1) of the Act expressly precludes a person from appealing to the Land and Environment Court against the terms of a planning agreement or against the failure of a planning authority to enter into an agreement. There is a core principle that a planning agreement must be made voluntarily on both sides, therefore, once voluntarily entered into, there are no appeal rights.

This does not affect the jurisdiction of the Land and Environment Court under section 123 of the Act to remedy or restrain a breach of the Act.

9.5 Amendment and revocation of planning agreements

Clause 25C(3) of the Regulation provides that a planning agreement can be amended or revoked by a further agreement, or with the agreement of all parties by the advertising of an intent to revoke and the execution of a revocation.

9.6 Monitoring and review

Council will monitor the performance of the developers obligations under a planning agreement. This may include Council requiring the developer (at the developers cost) to report periodically to Council on its compliance with obligations under the planning agreement.

Council may require a planning agreement to contain provisions establishing a mechanism under which the planning agreement is periodically reviewed with the involvement of all parties.

Council will require a planning agreement to contain a provision requiring the parties to use their best endeavours to agree on any modification to the agreement having regards to the outcome of the review.

9.7 Dispute resolution

Council will require a planning agreement to provide for mediation of disputes between parties to the agreement, before the parties may exercise any other legal rights in relation to the dispute. Unless agreed to otherwise by the parties, the planning agreement will provide that such mediation will be conducted pursuant to the Mediation Rules published by the Law Society of NSW current at the time the agreement is entered into.

If the dispute is not resolved under mediation, the dispute may, by agreement between the parties, be agreed to be resolved by expert determination by an independent expert in the relevant field.

9.8 Planning agreement register

Council is required to keep a register of planning agreements applying to land within the local government area, whether or not the Council is a party to the agreement. The register must record the date an agreement was entered into and a short description of the agreement, including any subsequent amendments.

Ku-ring-gai Council will make available for public inspection during ordinary office hours:

- the planning agreement register;
- copies of all planning agreements (and any amendments) that apply within the Ku-ring-gai local government area; and

- copies of explanatory notes relating to those agreements (including any amendments)

9.9 Costs

A planning agreement will make provision for payment by the developer of Councils costs of and incidental to:

- a) negotiating, preparing and entering into the agreement
- b) monitoring and enforcing the agreement

The above may include costs relating to legal advice, independent consultants/facilitators, land valuers, quantity surveyors, etc.

The costs incurred by Council will be borne by the developer at the time the cost is incurred, regardless of whether or not the agreement is ever finalised.

The planning agreement will specify that other costs related to the core purpose of the planning agreement, such as detailed landscape plans and architectural plans, will be borne by the developers.

A planning agreement may make provision in respect of any other costs.

9.10 Goods and Services Tax (GST)

In view of the complexity of the legislation, specific GST issues will be considered afresh with each and every planning agreement proposed to be negotiated.

9.11 Council contact

Persons making enquiries regarding planning agreements are advised to contact Ku-ring-gai Councils Infrastructure Co-ordinator on 9424 0000.

Attachment A – Draft Planning Agreement Template

Planning Agreement

Parties to the Agreement

1. KU-RING-GAI COUNCIL of 818 Pacific Highway, Gordon, New South Wales, 2072 **[Council]**; and
2. **[INSERT THE NAME AND THE ADDRESS OF THE DEVELOPER]** **[Developer]**
3. **[INSERT NAME AND ADDRESS OF ANY THIRD PARTY TO THE AGREEMENT E.G. THE MINISTER OR DELETE AS APPLICABLE]** **(Identify a short title for use in this agreement)**

Background

[DEVELOPMENT APPLICATIONS/DELETE FOR A CHANGE TO AN EPI]

1. On **[INSERT DATE]** the Developer **[MADE/AUTHORISED TO BE LODGED]** a Development Application **[TO/WITH]** the Council to carry out the Development on the Land.
2. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities identified in this agreement if that Development Consent was granted.
3. The Developer is the owner of the Land / has entered into a Contract for Sale of Land dated **[INSERT DATE]** for the purchase of the land / has an option to purchase the land the subject of this agreement dated **[INSERT DATE]**. **[DELETE AS APPLICABLE]**

[CHANGES TO AN ENVIRONMENTAL PLANNING INSTRUMENT/DELETE FOR A DA]

1. On **[INSERT DATE]** the Developer made an application to the Council for the Instrument Change specified in this Agreement for the purposes of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
2. That Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities identified in this agreement if that Development Consent was granted.
3. The Instrument Change was published in the NSW Government Gazette No. **[INSERT NUMBER]** on **[INSERT DATE]** and took effect on **[INSERT DATE]**.
4. On **[INSERT DATE]** the Developer **[MADE/AUTHORISED TO BE LODGED]** a Development Application **[TO/WITH]** the Council to carry out the Development on the Land.
5. The Developer is the owner of the Land / has entered into a Contract for Sale of Land dated **[INSERT DATE]** for the purchase of the land / has an option to purchase the land the subject of this agreement dated **[INSERT DATE]**. **[DELETE AS APPLICABLE]**

Operative Provisions

1 Planning Agreement Under The Act

The parties agree that this Agreement is a Planning Agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

This Agreement binds the parties and applies to the Land [SPECIFY THE LAND TO WHICH THE PLANNING AGREEMENT RELATES] and [SPECIFY THE DEVELOPMENT TO WHICH THE PLANNING AGREEMENT RELATES].

3 Operation of this Agreement

This Agreement takes effect ON EXECUTION OF THIS AGREEMENT / ON THE OCCURRING OF A SPECIFIC EVENT [TO BE SPECIFIED EG THE GRANTING OF CONSENT]

4 Definitions and Interpretation

4.1 Definitions

In this Agreement, the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended).

Completion means the stage in the construction of the works the subject of this agreement when, in the opinion of Council, the works are substantially complete except for minor omissions and minor defects which do not preclude the works from being reasonably capable of being used for their intended purpose(s).

Construction Certificate has the same meaning as in the Act.

Construction Costs means the construction cost of the works the subject of this Planning Agreement determined by the Council.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedicated Land means the land specified this Planning Agreement [INSERT REFERENCE] to be dedicated to the Council free of cost in accordance with this Agreement.

Defects Liability Period means the period 12 months from the date on which the works the subject of this agreement reach Completion.

Development means [SPECIFY THE NATURE OF THE DEVELOPMENT ASSOCIATED WITH THIS PLANNING AGREEMENT]

Development Application means the development application identified in this Planning Agreement including all modifications made under section 96 of the Act and includes all plans, reports, models, and other supplementary information submitted to the consent authority and pertaining to the determination of that Development Application.

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Development Consent means the consent granted by the Council to the Development Application for the Development identified in this Planning Agreement including all modifications made under section 96 of the Act.

Development Contribution means the sum of the Monetary Contribution, Dedicated Land or other Public Benefits (including, without limitation, the works the subject of this Agreement) including any combination of the above.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* and any other Act or regulation relating to the imposition or administration of the GST.

Guarantee means an unconditional bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia that:

- (a) is in favour of the Council;
- (b) for the Guarantee Amount; and
- (c) on such other terms and conditions the Council may approve from time to time.

Guarantee Amount means the amount specified in this Planning Agreement as varied from time to time in accordance with this Agreement.

Instrument Change means [INSERT REFERENCE TO THE SPECIFIC CHANGE WHICH RELATES TO THIS PLANNING AGREEMENT]

Land means the land identified in this Planning Agreement by reference to Lot and DP, given address and any other identifying particulars being the land the subject of this Planning Agreement.

Monetary Contribution means the amount set out in this Planning Agreement [INSERT REFERENCE] (indexed in accordance with [INSERT REFERENCE TO THE CLAUSE IN THIS AGREEMENT]) to be paid by the Developer to the Council in accordance with this Agreement.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this agreement, and includes their successors and assigns.

Public Benefits means the public benefits identified in this Planning Agreement [INSERT REFERENCE] which are to be provided as a result of this Planning Agreement.

Quantity Surveyor means a duly qualified quantity surveyor of at least five (5) year's experience in the assessment of building material and construction costs.

Quantity Surveyor Assessment means an assessment by an independent Quantity Surveyor of the Construction Cost to the reasonable satisfaction of the Council.

Regulation means the *Environmental Planning and Assessment Regulation, 2000* (as amended).

Works means the works identified in the sections 8, 9 and 10 of this agreement and any attachments referred to therein.

4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other gender.
- k) References to the word 'include' or 'including' are to be construed without limitation.
- l) A reference to this Agreement includes the agreement recorded in this Agreement.
- m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- n) Any schedules and attachments form part of this Agreement.
- o) Unless otherwise specified in this Planning Agreement, a word defined in the Act has the same meaning in this Agreement.

5 Development Contributions to be made under this Agreement

5.1 Payment of Monetary Development Contributions

- a) The Developer agrees to pay to the Council [SPECIFY PAYMENT OPTIONS E.G. CASH, BANK CHEQUE] the monetary contribution under specified IN THIS AGREEMENT / THE CONSENT CONDITION SPECIFIED IN THE DEVELOPMENT CONSENT [DELETE AS APPLICABLE] prior to release of the first Construction Certificate issued in respect of the Development Consent.
- b) The amount payable is to be indexed in accordance with the methodology stated IN THIS AGREEMENT / THE CONSENT CONDITION SPECIFIED IN THE DEVELOPMENT CONSENT [DELETE AS APPLICABLE].

6 Application of Development Contributions

6.1 Application of Development Contributions under Section 94 of the Act

The contributions are to be applied to the works specified in the relevant Development Contributions Plan(s) consistent with the priorities and estimated staging stated in that Development Contributions Plan(s).

6.2 Applications of Development Contributions under this agreement

[SPECIFY HOW AND WHEN MONETARY CONTRIBUTIONS ARISING AS A RESULT OF THIS AGREEMENT WILL BE EXPENDED BY THE COUNCIL]

7 Application of s94 and s94A of the Act to Development

- 7.1 [SPECIFY THE RELATIONSHIP BETWEEN THIS AGREEMENT AND SECTION 94 CONTRIBUTIONS DUE AND PAYABLE UNDER THIS CONSENT. I.E. IS THERE AN OFFSET? AGAINST HOW MANY CATEGORIES? OR DOES SECTION 94 APPLY UNCHANGED?]

8 Dedication of Land [DELETE IF NOT APPLICABLE]

- 8.1 [INSERT CLAUSES RELATING TO THE DEDICATION OF LAND GENERALLY GUIDED BY THE HEADS OF CONSIDERATION DOCUMENTED IN SECTION 6.4 OF THE PLANNING AGREEMENT POLICY]

9 Capital Works [DELETE IF NOT APPLICABLE]

- 9.1 [INSERT CLAUSES RELATING TO THE CARRYING OUT OF CAPITAL WORKS GENERALLY GUIDED BY THE HEADS OF CONSIDERATION DOCUMENTED IN SECTION 6.5 OF THE PLANNING AGREEMENT POLICY]

10 Other Contributions [DELETE IF NOT APPLICABLE]

- 10.1 [INSERT CLAUSES RELATING TO OTHER TYPES OF CONTRIBUTIONS GENERALLY GUIDED BY THE HEADS OF CONSIDERATION DOCUMENTED IN SECTIONS 6.6-69 OF THE PLANNING AGREEMENT POLICY]

11 Registration of this Agreement

- 11.1 [SPECIFY THAT THE AGREEMENT IS TO BE REGISTERED ON THE TITLE OF THE LAND]

12 Review of this Agreement

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12.1 [SPECIFY WHETHER AND IN WHAT CIRCUMSTANCES THE AGREEMENT CAN OR WILL BE REVIEWED AND THE PROCESS AND IMPLEMENTATION OF THE REVIEW THAT IS TO OCCUR]

13 Dispute Resolution

13.1 [SPECIFY AN APPROPRIATE DISPUTE RESOLUTION PROCESS]

14 Enforcement

14.1 [SPECIFY THE MEANS OF ENFORCING THE AGREEMENT E.G. BANK GUARANTEE POLICY]

15 Notices

15.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- a) delivered or posted to that Party at its address set out below;
- b) faxed to that Party at its fax number set out below;
- c) sent by document exchange to the DX number set out below;
- d) e-mailed to that Party at its email address set out below.

Ku-ring-gai Council

Attention:[INSERT NAME OF CONTACT]

Address: 818 Pacific Highway, Gordon, NSW 2072

Locked Bag 1056, Pymble, NSW, 2073

Fax Number: 02 9424 0880

DX number: 8703, Gordon

Email: _____@kmc.nsw.gov.au [COMPLETE EMAIL ADDRESS]

Developer

Attention:[INSERT DETAILS]

Address: [INSERT DETAILS]

Fax Number: [INSERT DETAILS]

DX number: [INSERT DETAILS]

Email: [INSERT DETAILS]

15.2 If a Party gives the other Party three business days notice of a change of its address or other details, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

- 15.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- a) If it is delivered, when it is left at the relevant address;
 - b) If it is sent by post, two business days after it is posted;
 - c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number;
 - d) If it is sent by DX, one business day after it is dispatched.
- 15.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

16 Approvals and consent

- 16.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

17 Assignment and Dealings

- 17.1 [SPECIFY ANY RESTRICTIONS ON THE DEVELOPER'S DEALINGS IN THE LAND TO WHICH THE AGREEMENT APPLIES AND THE PERIOD DURING WHICH THOSE RESTRICTIONS APPLY]

18 Costs

- 18.1 [SPECIFY HOW THE COSTS OF NEGOTIATING, PREPARING, EXECUTING, STAMPING AND REGISTERING THE AGREEMENT ARE TO BE BORNE BETWEEN THE PARTIES]

19 Entire agreement

- 19.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

20 Further acts

- 20.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

21 Governing law and jurisdiction

21.1 This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal. The parties will not object to the exercise of jurisdiction by those courts on any basis.

22 Joint and individual liability and benefits

22.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23 No fetter

23.1 Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24 Representations and warranties

24.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

25 Severability

25.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

26 Modification

26.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

27 Waiver

27.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

28 GST

28.1 If any part reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then a recipient of the supply must pay an additional amount equal to the GST on that supply.

EXECUTED as an Agreement:

PARTY

KU-RING-GAI COUNCIL by [INSERT NAME] in the presence of [INSERT NAME]:

Delegate:

Witness:

PARTY

[INSERT DEVELOPER & ACN] in accordance with section 127 of Corporations Law:

PARTY

[INSERT DETAILS OF ANY THIRD PARTY OR DELETE AS APPLICABLE]

Attachment B – Sample Explanatory Note

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Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

1. Parties

(Planning Authority)

(Developer)

2. Description of Subject Land

3. Description of Proposed Change to Environmental Planning Instrument / Development Application

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

5. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Planning Agreement

How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

How the Draft Planning Agreement Promotes the Public Interest

For Planning Authorities:

- (a) Development Corporations – How the Draft Planning Agreement promotes its Statutory Responsibilities
- (b) Other Public Authorities - How the Draft Planning Agreement promotes the Objects (if any) of the Act under Which it is Constituted
- (c) Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter
- (d) All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Programme

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

Other Matters

Signed and Dated by All Parties

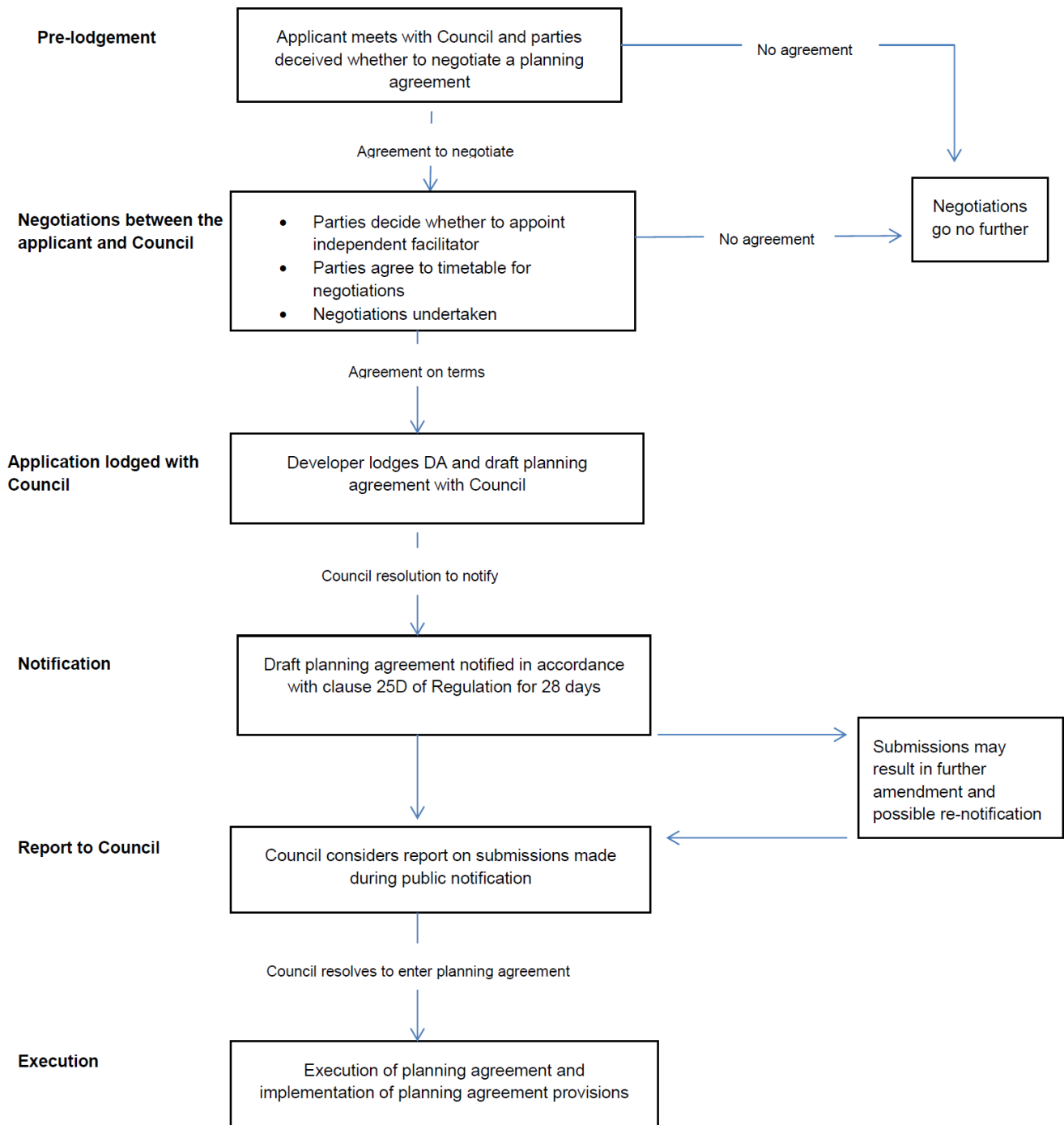
Attachment C – Potential Public Benefits

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The following is a list of possible public benefits that may be provided by a planning agreement. This list is not exhaustive and developers are encouraged to discuss these or other requirements that may be included in a planning agreement.

Infrastructure	<ul style="list-style-type: none"> • Accessibility improvements • Roads • Drainage and stormwater controls • Traffic measures • Works that facilitate and enhance existing public transport facilities • Pedestrian and cycleway linkages and footpaths • Bridges
Public Open Space	<ul style="list-style-type: none"> • Parks • Public spaces • Embellishment to new or existing open space, including upgrades to existing open space such as play equipment, lighting, sports facilities, furniture, public art and landscape works
Public Community Facilities	<ul style="list-style-type: none"> • Recreation facilities (indoor and outdoor) • Cultural and social facilities • Community facilities • Childcare centres
Bushland Regeneration	<ul style="list-style-type: none"> • Restoration and management of natural areas including bushland and creeks.
Other	<ul style="list-style-type: none"> • Cash contributions • Land dedications for parks, facilities, pedestrian connectivity and new roads • Affordable housing • Other works or improvements within the broad categories listed above at the discretion of Council

Attachment D – Flow Chart of Planning Agreement Process



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Attachment E – Ku-ring-gai Council Statement of Business Ethics

Ku-ring-gai Council

STATEMENT OF BUSINESS ETHICS

20 August 2008

Council and this statement

Ku-ring-gai Council works with private, public and non-profit sectors to provide a diverse range of services to the community. The community expects us to have high ethical standards in everything we do. We are expected to not have any conflict between our own interests and our obligations to the community.

This statement is intended for anyone in the private, public or non-profit sectors who is involved in a business arrangement with us or is proposing to be in such an arrangement. It explains our ethical position. Anyone dealing with Ku-ring-gai Council

in a business arrangement is expected to comply with the ethical framework in which we work. This statement outlines what you can expect from us and what we will expect from you in any business dealings.

In this statement, "we", "us" and "our" refer to Ku-ring-gai Council, its Councillors, staff, authorised delegates and volunteers. "You" and "your" refers to individuals, organisations and businesses (including agents and sub-contractors) that deal with or wish to deal with Ku-ring-gai Council.

We operate under a Code of Conduct that is based on the following key principles:

Integrity

We must not place ourselves under any financial or other obligation that might reasonably be thought to influence us in the performance of our duties.

Leadership

We promote and support the key principles by demonstrating effective leadership which maintains and strengthens public trust and confidence in the integrity of the Council.

Selflessness

We make our decisions solely in the public interest and do not act in order to gain any financial or other benefit for ourselves, our family, friends or business interests.

Impartiality

We make our decisions solely on merit and in accordance with our statutory obligations.

Accountability

We are accountable to the public for our decisions and actions and must consider issues on their merits, taking into account the views of others.

Openness

We are as open as possible about our decisions and actions, giving reasons for decisions and restricting information only when the wider public interest clearly demands this.

Honesty

We act honestly. We declare private interests relating to our public duties and take steps to resolve any conflicts in a way that protects the public interest.

Respect

We treat others with respect at all times.

What this means

This means we uphold high standards of behaviour and ethics. We:

- Act with integrity to maintain public trust
- Resolve personal and professional conflicts in the public interest
- Respect and follow the spirit and intent of the law as well as our policies and procedures
- Use all public resources properly and efficiently
- Make decisions based on merit
- Give reasons for our decisions.

In making our business decisions we strive to obtain the best value for money. Depending on the circumstances, our decision making takes into account many things including upfront costs, ongoing costs, suitability, quality, reliability, availability, experience, reputation, safety, legal compliance and environmental friendliness.

While we strive to obtain the best price for goods and services we do not necessarily buy at the

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cheapest price nor sell at the highest price. We are required to call tenders for goods and services estimated to cost more than \$150,000 and to specify the assessment criteria in our tender documents. We obtain quotes for other goods and services in accordance with our Purchasing Policy and Procedures Manual. However, we do not always go to open tender nor get quotes for low value items. We do not generally invite proposals from businesses that have performed poorly in the past. We do not normally restrict our dealings to just one business unless there are exceptional circumstances and valid reasons to do so.

We are fair in our decision making. That means we are objective, reasonable and even-handed. It does not mean that we can satisfy everyone all of the time. If you are adversely affected by our decision that may be unfortunate, but it does not necessarily mean it is unfair. We will publicly support our decisions unless we have to maintain confidentiality or protect privacy.

What you can expect from us

You can expect us to:

- Be professional, honest, accessible, open, fair and ethical
- Communicate clearly and respond promptly to questions resolving any issues quickly
- Comply with the law, this statement and the policies and procedures that guide our methods of operation
- Provide open competition for work in the necessary or optimum way
- Resolve any actual, perceived or potential conflicts of interests in the public interest
- Make objective decisions based on merit considering reasonable criteria and only relevant and material facts
- Strive to achieve the best value for money
- Never seek any gifts or other personal benefits
- Protect privacy and confidentiality where necessary
- Provide a safe and healthy work environment.

What we expect from you

We expect you to:

- Be professional, honest, accessible, open, fair and ethical

- Communicate clearly and respond promptly to questions resolving any issues quickly
- Comply with the law, this statement, our policies and procedures and all relevant specifications
- Declare to us any actual, perceived or potential conflicts of interests if and when they occur and work with us to resolve them in the public interest
- Provide us with a quality product or service on time that gives us value for money
- Not pressure us in our decision making
- Not offer to us any bribes, gifts or benefits that are intended to influence our decision making
- Not be involved in any collusive practices
- Talk directly to us about any problems you have with our relationship and not discuss anything publicly or with the media
- Protect privacy and confidentiality where expected or necessary
- Tell us about any unethical business practices that you know exist
- Provide a safe and healthy work environment.

Other important things to note also

Gifts

We do not expect to get a gift from you in return for work from us. While we do not encourage gift giving we do understand that sometimes people like to show appreciation or demonstrate good faith in our business relationship by giving a gift. Only token gifts of nominal value that do not create a sense of obligation may be accepted by us. We have a Gifts and Benefits Policy and a Register in which certain gifts are recorded.

Sponsorships

We sometimes get financial or other sponsorship for our activities and events. We also provide sponsorships, grants and donations to others. In accordance with our Sponsorship Policy our sponsorship practices are open and transparent and do not compromise our decision making.

Secondary employment

In accordance with our Secondary Employment Policy we cannot have a second job that might create a conflict of interests. We can not use commercially sensitive information in order to get another job.

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Non-compliance

If we engage in unethical or illegal (including corrupt) behaviour it could lead to:

- Criminal investigation
- Criminal prosecution
- Loss of reputation
- Disciplinary action that may result in dismissal.

If you engage in any unethical or illegal (including corrupt) behaviour it could lead to:

- Criminal investigation
- Criminal prosecution
- Termination of order/contract
- Disqualification of tender
- Loss of future work
- Loss of approval
- Loss of reputation.

Further information

We think that compliance with this statement benefits everyone and upholds public trust and confidence in Ku-ring-gai Council. Understanding and complying with this statement may also assist you to compete on a level playing field to obtain other public sector work operating under similar requirements.

If you have any questions about this statement please contact our Public Officer. If you are concerned about a possible breach of this statement, or about any conduct that could involve fraud, corruption, maladministration or serious and substantial waste of public funds, please contact the General Manager or Internal Ombudsman. You may also consider contacting the NSW Ombudsman and/or the Independent Commission Against Corruption (ICAC).

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