



**POLICY NO: CCC025**

# **POLICY FOR VOLUNTARY PLANNING AGREEMENT FOR GOSFORD CITY CENTRE**



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## **VOLUNTARY PLANNING AGREEMENTS POLICY FOR GOSFORD CITY CENTRE**

Environment and Planning – Strategic Planning

### **POLICY OBJECTIVES**

The objectives of this policy are:

- To establish a fair, transparent and accountable framework governing the use of planning agreements by Council;
- To enhance the range and extent of development contributions and/or provision of infrastructure / land made by development towards public facilities in Council's area;
- To enhance planning flexibility in the Council's area through the use of planning agreements;
- To set out Council's specific policies and procedures relating to the use of planning agreements within Council's local government area;
- To facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public facilities;
- To set out Council's specific policy requirements in relation to significant public benefits within the commercial core zoned area of the Gosford City Centre

### **POLICY STATEMENT**

#### **1 Introduction**

- This Policy sets out Central Coast Council's policy, principles and procedures relating to planning agreements under the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000, as they relate to the Gosford City Centre.

##### **1.1 Name of this policy**

Central Coast Council Voluntary Planning Agreements Policy for the Gosford City Centre.

##### **1.2 Commencement of this policy**

This Policy was adopted by resolution of the Council on 26/07/2017.

##### **1.3 Terminology and Definitions used in this policy**

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

*Affordable housing* has the same meaning as in the Act;



*Contributions Plan* means a contributions plan approved under section 94EA of the Act for the purpose of requiring contributions under section 94 or 94A of the Act;

*Council* means Central Coast Council;

*Developer* means a person who has sought a change to an environmental planning instrument, or has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person;

*Development application* has the same meaning as 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;

GDCP 2013 means the *Gosford Development Control Plan 2013*;

GLEP 2014 means the *Gosford Local Environmental Plan 2014*;

*Explanatory note* means a written statement that provides details of the objectives, nature, effect and merits of the planning agreement, or an amendment to or revocation of a planning agreement;

*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* does not include the payment of a monetary contribution or the dedication of land free from cost;

*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;

*Planning obligation* means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution;

*Planning Proposal* is document that explains the intended effect of a proposed local environmental plan (LEP) and sets out the justification for making that plan;

*Practice Note* means the Practice Note on Planning Agreements published by the Department of Planning and Infrastructure (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;



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

*Public purpose* means any purpose that benefits the public including but not limited to a purposes specified in s93F (2) of the Act;

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

*S94A CP* means the *Gosford City Council Section 94A Development Contributions Plan – Gosford City Centre*;

*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 Legal context**

The current legal and procedural framework for planning agreements consists of the following:

The provisions of Subdivision 2 of Division 6 of Part 4 of the Act ie. s93F-93L;

- The provisions of Division 1A of Part 4 of the Regulation; and
- This policy.

This policy is not legally binding. However it is intended that the Council and all persons dealing with the Council in relation to planning agreements will follow this policy to the fullest extent possible.

## **1.5 Land title**

All voluntary planning agreements must be registered on the title of the land in accordance with Section 93H of the Environmental Planning and Assessment Act 1979.

# **2 Policy on the Use of Voluntary Planning Agreements**

## **2.1 Council's strategic objectives for the use of voluntary planning agreements**

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

- To provide an enhanced and more flexible development contributions system for the Council, which achieves net planning benefits from development wherever possible and appropriate,
- More particularly, to supplement or replace, as appropriate, the application of s94 and s94A of the Act to development, including bringing forward items in Contributions Plan work schedule,
- To give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits,
- To allow the community, through the public participation process under the Act, to consider the redistribution of the costs and benefits of development in order to realise public preferences for the provision of public benefits,

- To adopt innovative and flexible approaches to the provision of infrastructure in a manner that is consistent with the Council's adopted Community Strategic Plan and Delivery Program,
- To provide or upgrade infrastructure to appropriate levels that reflect and balance environmental standards (including, without limitation, the principles of ecologically sustainable development), public expectations and funding priorities,
- To ensure that developers make appropriate development contributions towards the cost of provision and management of public facilities within the Council's area,
- To provide certainty for the public, developers and Council in respect to infrastructure and development outcomes.
- To provide for the monitoring of the planning impacts of the development, and
- To provide for the conservation and enhancement of the natural environment.

## 2.2 Fundamental principles governing the use of voluntary planning agreements

The Council's use of voluntary planning agreements will be governed by the following principles:

- Planning decisions may not be bought or sold through voluntary planning agreements,
- Development that is unacceptable on planning grounds (including, without limitation, environmental grounds) will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms;
- The Council will not allow voluntary planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act, or law;
- The Council will not use voluntary planning agreements for any purpose other than a proper planning purpose;
- The Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed voluntary planning agreement;
- The Council will not improperly rely on its statutory position, or otherwise act improperly, in order to extract unreasonable public benefits from developers under voluntary planning agreements, and will ensure that all parties involved in the voluntary planning agreement process are dealt with fairly;
- If the Council has a commercial stake in development the subject of agreements, 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;
- The Council will not seek benefits under a voluntary planning agreement that are wholly unrelated to a particular development;
- When considering a development application or environmental planning instrument change, the Council will not take into consideration any public facility or public benefits proposed in the voluntary planning agreement that are wholly unrelated to the application; and
- When considering a development application or environmental planning instrument change, the Council will not give undue weight to a voluntary planning agreement;

## 2.3 Circumstances in which council will consider negotiating a voluntary planning agreement



The Council, in its complete discretion, may negotiate a voluntary planning agreement with a developer and owner in connection with any application by the developer for an environmental planning instrument change or for development consent relating to any land in the Council's area.

## **2.4 Specific purposes of planning agreements**

The Council may consider negotiating a voluntary planning agreement with a developer to:

- Compensate for the loss of, or damage to, a public amenity, service, infrastructure, resource or asset caused by the development through its replacement, substitution, repair or regeneration;
- Meet the demands created by the development for new public infrastructure, amenities and/or services;
- Achieve the provision of affordable housing;
- Address a deficiency in the existing provision of public facilities in the Council's area;
- Achieve recurrent funding in respect of public facilities;
- Prescribe inclusions in the development that meet specific planning objectives of the Council;
- Monitor the planning impacts of development;
- Secure planning benefits for the public;
- Secure the conservation or enhancement of the natural environment;
- Enable items in Council's Contributions Plans' work schedules to be brought forward.

## **2.5 Acceptability test to be applied to all voluntary planning agreements**

The Council will apply the following test in order to assess the desirability of a proposed planning agreement:

- Does the proposed voluntary planning agreement meet the requirements of the Act and Regulation?
- Is the proposed voluntary planning agreement directed towards a proper or legitimate planning purpose having regard to its statutory planning controls and other adopted planning policies and the circumstances of the case?
- Does the proposed voluntary planning agreement provide for a reasonable means of achieving the relevant purpose?
- Can the proposed voluntary planning agreement be taken into consideration in the assessment of the relevant planning proposal or development application?
- Will the voluntary planning agreement produce outcomes that meet the general values and expectations of the community and protect the overall public interest?
- Does the proposed voluntary planning agreement promote the Council's strategic objectives in relation to the use of planning agreements?
- Does the proposed voluntary planning agreement conform to the fundamental principles governing the Council's use of planning agreements?
- Are there any relevant circumstances that may operate to preclude the Council from entering into the proposed voluntary planning agreement?
- Will the proposed planning agreement provide public benefits that bear a relationship to the development?

## **2.6 Consideration of planning agreements in relation to environmental planning instrument changes and development applications**

When exercising its functions under the Act in relation to an application by a developer for a change to an environmental planning instrument or a development consent to which a proposed planning agreement relates, the Council will consider to the fullest extent permitted by law:

- Whether the proposed voluntary planning agreement is relevant to the application and hence may be considered in connection with the application: and
- If so, the proper planning weight to be given to the proposed voluntary planning agreement, including taking into account those matters referred to in Clause 2.2.

## **2.7 Application of s94 and s94A to development to which a voluntary planning agreement relates**

The Council has no general policy on whether a voluntary planning agreement should exclude the application of s94 or s94A of the Act to development to which the voluntary planning agreement relates. This is a matter for negotiation between the Council and a developer having regard to the particular circumstances of the case.

However, where the application of s94 or s94A of the Act to development is not excluded by a voluntary planning agreement, the Council will generally not agree to a provision allowing benefits under the agreement to be taken into consideration in determining a development contribution under s94 or s94A.

## **2.8 Application to vary development standards under Clause 4.2 of GLEP 2014 to development to which a voluntary planning agreement relates**

The Council will not agree to a provision in a voluntary planning agreement requiring the benefit provided by the developer under the agreement to be used to justify a dispensation with the applicable standards clause 4.2 of the GLEP 2014 which provides for exceptions to development standards in relation to development, unless the Council is of the opinion that the subject matter of the proposed voluntary planning agreement addresses the matters to be addressed under that Policy or clause in relation to the dispensation sought.

## **2.9 Form of development contributions under a voluntary planning agreement**

The form of particular development contributions to be made under a proposed voluntary planning agreement will be determined by the particulars of the environmental planning instrument change or development application to which the proposed voluntary planning agreement relates. Without limitation, development contributions by a developer under a proposed voluntary planning agreement may include:

- The dedication of land to the Council
- The provision of particular public facilities and/or infrastructure;
- The making of a monetary contribution towards the cost of the provision of public facilities and/or infrastructure.
- Or any combination of the above benefits
- The monitoring of the planning impacts of development



- The conservation or enhancement of the natural environment

## **2.10 Standard Charges**

Wherever possible, the council will seek to standardise development contributions sought under voluntary planning agreements in order to streamline negotiations and provide fairness, predictability and certainty for developers. This, however, does not prevent public benefits being negotiated on a case by case basis, particularly where planning benefits are also involved.

## **2.11 Recurrent charges**

The Council may request developers, through a voluntary planning agreement, to make development contributions towards the recurrent costs of public facilities, including maintenance and operational costs.

Where the public facility primarily serves the development to which the planning agreement relates or neighbouring development, the arrangement for recurrent funding may be in perpetuity. However, where the public facility or public benefit is intended to serve the wider community, the voluntary planning agreement will only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the ongoing costs of the facility.

## **2.12 Pooling of development contributions**

Where a proposed voluntary planning agreement provides for a monetary contributions by the developer, the Council may seek to include a provision permitting money to be paid under the agreement to be pooled with money paid under other voluntary planning agreements and applied progressively for the different purposes under those agreements, subject to the specific requirements of the relevant agreements.

Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

## **2.13 Methodology for valuing public benefits under a voluntary planning agreement**

Provision of land for a public purpose

Where the benefit under a voluntary planning agreement is the provision of land for a public purpose, the value of the benefit will be determined by an independent valuer of at least 10 years experience in valuing land in New South Wales (and who is acceptable to Council), on the basis of a scope of work which is prepared by the Council.

All costs of the independent valuer in carrying out such a valuation will be borne by the developer.



### Carrying out of works for a public purpose

Where the benefit under a voluntary planning agreement is the carrying out of works for a public purpose, the value of the benefit will be determined by an independent quantity surveyor of a least 10 years experience (and who is acceptable to the Council), on the basis of an estimated value of the completed works determined using the method that would be ordinarily adopted by a quantity surveyor.

The scope of the work for this independent quantity surveyor will be prepared by the Council. All costs of the independent quantity surveyor in carrying out this work will be borne by the developer.

### Provision of a Material Public Benefit

Where the benefit under a voluntary planning agreement is the provision of a material public benefit, the Council and the developer will negotiate the manner in which the benefit is to be valued for the purposes of the agreement. All costs associated with valuation of the material public benefit will be borne by the developer.

## **2.14 Credits and refunds**

The Council generally will not agree to a voluntary planning agreement providing for the surplus value under a voluntary planning agreement being refunded to the developer or offset against development contributions required to be made by the developer in respect of other development in the Council's area.

## **2.15 Time when developer's obligations arise under a voluntary planning agreement**

The Council will generally require a voluntary planning agreement to provide that the developer's obligations under the agreement take effect when the first development consent operates in respect of development that is the subject of the agreement, and will operate progressively, in accordance with its terms, as the relevant development proceeds from the issue of the first construction certificate in respect of that development until the issue of the final occupation certificate.

## **2.16 Implementation agreements**

In appropriate cases, the Council may require a voluntary planning agreement to provide that before the development, the subject of the agreement is commenced, the parties are to enter into an implementation agreement that provides for matters such as:

- The times at which and, if relevant, the period during which, the developer is to make provision under the voluntary planning agreement;
- The design, technical specification and standard of work required by the voluntary planning agreement to be undertaken by the developer;
- The manner in which a work is to be handed over to the Council;



- The manner in which a material public benefit is to be made available for its public purpose in accordance with the planning agreement; and
- The management or maintenance of land or works following hand-over to the council.



### **2.17 Monitoring and review of a voluntary planning agreement**

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

The Council will require the voluntary planning agreement to contain a provision establishing a mechanism under which the voluntary planning agreement is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance of the voluntary planning agreement.

The Council will require the voluntary planning agreement to contain a provision requiring the parties to use their best endeavours to agree on a modification to the agreement having regard to the outcomes of the review.

### **2.18 Modification or discharge of the developer's obligations under a voluntary planning agreement**

The Council may generally agree to a provision in a voluntary planning agreement permitting the developer's obligations under the current agreement to be modified or discharged where the modification or discharge is linked to the following circumstances:

- The developer's obligations have been fully carried out in accordance with the agreement;
- The developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become legally bound to the Council to perform the developer's obligations under the agreement;
- The development consent to which the agreement relates has lapsed under the Act;
- The performance of the planning agreement has been frustrated by an event beyond the control of the parties; and
- The Council and the developer otherwise agree to the modification or discharge of the voluntary planning agreement.
- Any Council costs agreeing to or execution of a voluntary planning agreement are to be paid by the developer.

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

### **2.19 Assignment and dealings by the developer**

The Council will require every voluntary planning agreement to provide that the developer may not assign its rights or obligations under the voluntary planning agreement nor have any dealing in relation to the land the subject of the agreement unless, in addition to any other requirements of the agreement:

- The Council has given its consent to the proposed assignment or dealing;



- The developer has, at no cost to the Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of the Council by which that person agrees to be legally bound by the agreement as if they were a party to the original agreement; and
- The developer is not in breach of the voluntary planning agreement.



## **2.20 Provision of security under a voluntary planning agreement**

The Council will require a voluntary planning agreement to make provision for security by the developer's obligations under the voluntary planning agreement.

Unless otherwise agreed by the parties in a particular case, the form of security required by the Council will generally be an unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's provision under the voluntary planning agreement and on terms otherwise acceptable to the Council.

Where a voluntary planning agreement requires a cash contribution to be made to Council, Council will not accept a bank guarantee in lieu.

## **2.21 Preparation and form of the voluntary planning agreement**

Voluntary planning agreements will be prepared by the Council, at the developer's cost.

## **2.22 Council's costs of negotiating, entering into, monitoring and enforcing a voluntary planning agreement**

The Council will generally require a voluntary planning agreement to make provision for payment by the developer of Council's costs of and incidental to:

- Negotiating, preparing and entering into the voluntary planning agreement,
- Enforcing and monitoring the voluntary planning agreement.

The amount to be paid by the developer will be determined by Council in each case. However as a general rule, Council considers that whether the voluntary planning agreement relates to an application by the developer for an environmental planning instrument change, or relates to a development application, in each case it is fair and reasonable that the developer will pay the whole of Council's costs.

In particular cases, the Council may require the voluntary planning agreement to make provision for a development contribution by the developer towards the ongoing administration of the agreement.

## **2.23 Notations on Certificates under s149 (5) of the Act**

The Council will generally require a voluntary planning agreement to contain an acknowledgement by the developer that the Council may, in its absolute discretion, make a notation under s149 (5) of the Act about a voluntary planning agreement on any certificate issued under s149 (2) of the Act relating to the land the subject of the agreement or any other land.

## **2.24 Registration of voluntary planning agreements**





The Council has the absolute discretion whether to register a voluntary planning agreement or not against the Certificate of Title of land owned by the developer. All costs associated with the registration or otherwise will be borne by the developer.



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## **2.25 Dispute resolution**

In the first instance Council will require the Chief Executive Officer and the developer or any of their delegates to enter into bona fides discussions to resolve any disputes which may arise. Should resolution not be possible then the mediation provisions of the voluntary planning agreement will come into effect.

The Council will generally require a voluntary planning agreement to provide for mediation of disputes between the parties to the agreement, at their own cost, before the parties may exercise any other legal rights in relation to the dispute.

Unless the parties agree otherwise, the voluntary planning agreement will provide that such mediation will be conducted pursuant to the Mediation Rules published by the Law Society of New South Wales current at the time the agreement is entered into.

## **2.26 Hand-over of works**

The Council will not generally accept the hand-over of a public work carried out under a voluntary planning agreement unless the developer furnishes to the Council a certificate to the effect that the work has been carried out and completed in accordance with the agreement and any applicable development consent (which certificate may, at the Council's discretion, be a final occupation certificate, compliance certificate or a subdivision certificate) and, following the issue of such a certificate to the Council, the work is also certified as complete by a Council building surveyor or engineer.

The Council will also require the voluntary planning agreement to provide for a defects liability period during which any defects must be rectified at the developer's expense.

## **2.27 Management of land or works after hand-over**

If a voluntary planning agreement provides for the developer, at the developer's cost, to manage or maintain land that has been dedicated to the Council or works that have been handed over to the Council, the Council will generally require the parties to enter into a separate implementation agreement in that regard (see paragraph 2.17 of this Policy).

The failure of the parties to reach agreement in relation to management and maintenance of the land or works may be dealt with under the dispute resolution provisions of the voluntary planning agreement.

## **2.28 Public use of privately-owned facilities**

If a voluntary planning agreement provides for the developer to make a privately-owned facility available for public use, the council will generally require the parties to enter into a separate implementation agreement in that regard (see paragraph 2.17 of this Policy).





Such agreement may, subject to the Council's agreement, provide for payment to the developer of a reasonable fee by the member of the public who desires to use the relevant facility.



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## **2.29 Developer not the owner**

Where the developer is not the owner, the owners shall be party to the voluntary planning agreement together with any mortgagees. A mortgagee is bound if a mortgagor takes possession of, or exercises power of sale over the property.

### **PROCEDURE**

The attached procedures (Attachment A & B), being an administrative process, may be altered as necessary by the Chief Executive Officer.

## **3 Procedures Relating to the Use of Voluntary Planning Agreements**

### **3.1 Council's negotiation system**

The Council's negotiation system for voluntary planning agreements under the Act and the Environmental Planning and Assessment Regulation 2000 aims to be efficient, predictable, transparent and accountable.

The system seeks to ensure that the negotiation of voluntary planning agreements runs in parallel with applications for environmental planning instrument changes or development applications.

The system is based on principles of fairness, co-operation, full disclosure, early warning, and agreed working practices and timetables.

### **3.2 When should a voluntary planning agreement be negotiated?**

The Council is required to ensure that a voluntary planning agreement is publicly notified as part of and in the same manner as and contemporaneously with the application for the environmental planning instrument change (i.e. Planning Proposal process) or the development application to which it relates.

The voluntary planning agreement will be negotiated and documented generally before the application is lodged with Council and before it is publicly notified as required by the Act and Regulation. The voluntary planning agreement will generally accompany the application on lodgement.

In the case of Planning Proposals it may not always be feasible to negotiate a voluntary planning agreement prior to lodgement of the application.

### **3.3 Who will negotiate a voluntary planning agreement on behalf of the Council?**

The Council's Chief Executive Officer, or another Council officer with appropriate delegated authority, will negotiate a voluntary planning agreement on behalf of the Council.

The councillors will not be involved in the face to face negotiation of the voluntary planning agreement.

### **3.4 Separation of the Council's commercial and planning assessment roles**

If the Council has a commercial interest in the subject matter of a voluntary planning agreement as a landowner, developer or financier, the Council will ensure that the person who assesses the application to which a voluntary planning agreement relates is not the same person or a subordinate of the person who negotiated the terms of the voluntary planning agreement on behalf of the Council in its capacity as landowner, developer or financier.

### **3.5 Role of the governing body of the Council in relation to development applications to which voluntary planning agreements relate**

Except as otherwise agreed by the Chief Executive Officer, the governing body of Council will determine applications for Development to which a planning agreement relates.

### **3.6 Involvement of independent third parties in the negotiation process**

The Council may encourage the appointment of an independent person to facilitate or otherwise participate in the negotiations or aspects of it, such as where:

- An independent assessment of a proposed environmental planning instrument change or development application is necessary or desirable;
- Factual information requires validation in the course of negotiations;
- Sensitive financial or other confidential information must be verified or established in the course of negotiations;
- Facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved; or
- Dispute resolution is required under a voluntary planning agreement.
- The costs of the independent person will be borne by the developer.

### **3.7 Key steps in the negotiation process**

The negotiation of a voluntary planning agreement will generally involve the following key steps:



- Before lodgement of the relevant application by the developer, the parties will decide whether to negotiate a voluntary planning agreement;
- The parties will then appoint a person to represent them in the negotiations;
- The parties may also appoint a third person to attend and take minutes of all negotiations;
- The parties will also decide whether to appoint an independent person to facilitate or otherwise participate in the negotiations or aspects of it;
- The parties will also agree on a timetable for negotiations and the protocols and work practices governing their negotiations;
- The parties will then identify the key issues for negotiation and undertake the negotiations;
- If agreement is reached, the Council will prepare the proposed voluntary planning agreement and provide a copy of it to the developer;
- The parties will undertake further negotiation on the specific terms of the proposed voluntary planning agreement;
- Once agreement is reached on the terms of the proposed voluntary planning agreement, the developer will be required to execute the agreement;
- The developer may then make the relevant application to the Council accompanied by a copy of the proposed voluntary planning agreement; or
- The parties may be required to undertake further negotiations and, hence, a number of the above steps as a result of the public notification and inspection of the voluntary planning agreement or its formal consideration by the Council in connection with the relevant application.

### **3.8 Public Notification of voluntary planning agreements**

A voluntary planning agreement must be publicly notified and available for public inspection for a minimum period as specified by the Act, currently 28 days, which may be extended at Council's discretion.

The Council is required to ensure that a voluntary planning agreement is publicly notified as part of and in the same manner as and contemporaneously with the application for the environmental planning instrument change or the development application to which it relates.

Where the application to which a voluntary planning agreement relates is required by or under the Act or Regulation to be publicly notified and available for public inspection for a period exceeding 28 days or such longer period as Council decides, the Council will publicly notify the voluntary planning agreement and make it available for public inspection for that longer period.

Where the application to which a voluntary planning agreement relates is permitted by or under the Act or Regulation to be publicly notified and available for public inspection for a period of less than 28 days, the Council will publicly notify the application and make it available for public inspection for a minimum period of 28 days.



The Council will publicly re-notify and make available for public inspection a proposed voluntary planning agreement and the application to which it relates if, in the Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the agreement or application, or their formal consideration by the Council, or for any other reason.

### **3.9 When is a voluntary planning agreement required to be entered into?**

A voluntary planning agreement is entered into when it is signed by all of the parties.

A voluntary planning agreement can be entered into at any time after the voluntary planning agreement is publicly notified in accordance with the Act and Regulation.

The Council will usually require a voluntary planning agreement to be entered into as a condition of granting development consent to the development to which the agreement relates.

Generally the Council will sign the voluntary planning agreement on the same day, or as soon as possible after the day, that the development consent or environmental planning instrument change to which the agreement relates, is granted or made. However there may be circumstances where it is necessary to enter into a voluntary planning agreement before consent is granted or the change to the environmental planning instrument is made.

## **ATTACHMENT A – SPECIFIC REQUIREMENTS FOR GOSFORD CITY CENTRE VOLUNTARY PLANNING AGREEMENTS**

### **4 Gosford Commercial Core Contribution Rate**

#### **4.1 Introduction**

This section of the Voluntary Planning Agreement Policy provides details on carrying out developments which exceed the current height and/or floor space ratio i.e the 'base controls' currently contained within Clauses 4.3 and 4.4 of the GLEP 2014. Developments which exceed the base controls are required to provide a significant public benefit due to the increased density and resultant demand for community infrastructure above that envisaged and planned for having regard to the base controls within the GLEP 2014 and the S94A CP.

This section only applies to the Gosford City Centre and the land within the proposed commercial core area as shown in Figure 1 below.





Figure 1

#### 4.2 How development exceeding “base controls” may be carried out in exchange for significant public benefits

Development may be carried out through the developer lodging a development application together with a Voluntary Planning Agreement in relation to the proposed development.

Prior to the lodgement of the development application the applicant/landowner makes an offer to Council outlining their willingness to enter into a Voluntary Planning Agreement to provide a significant public benefit in accordance with this policy.

A draft planning agreement is to be prepared by Council at the applicant’s expense which is to be submitted with the development application.







The draft voluntary planning agreement and the development application are to be exhibited concurrently.



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The Voluntary Planning Agreement will outline Council's requirements in relation to the value of the significant public benefit as determined by Clause 4.6 of this section, timing of the payment of the significant public benefit, period of the development consent and other requirements as outlined in Council's Voluntary Planning Agreements Policy.

The development must demonstrate compliance with the proposed provisions of the planning proposal pertaining to the commercial core as well as any related subsequent amendment to the Gosford Local Environmental Plan, including the provision of a significant public benefit and the proposed amendments to the GDCP 2013 relating to Gosford City Centre. It must also be acceptable having regard to its design including design excellence, the planning merits of the proposal and the provisions of section 79C of the Act. It is not sufficient justification for development which exceeds the base controls to rely on previous development approvals within the Gosford City Centre or on the provision of a significant public benefit for approval.

#### **4.3 Why is community infrastructure needed in Gosford City Centre Area?**

Revitalisation of Gosford City Centre, the regional capital of the Central Coast will play an important role in providing the region's future employment and medium and high density housing as well as contribute to Central Coast Council meeting its dwelling and job targets set by the New South Wales Government for the Gosford City Centre.

To achieve the revitalisation of the city centre and to accommodate the expected growth, there will need to be a substantial level of infrastructure provided above that which currently exists.

S94A CP provides a description of the civic infrastructure needed to support the growth of development in the city centre. The Plan imposes a 4% flat levy on the cost of development and applies to all development within the city centre that has a value greater than \$250,000 and that increases gross floor area.

The S94A CP outlines public domain and special city centre projects which are to be partly funded by monetary contributions from new development within the Gosford City Centre having regard to the "base controls" within the GLEP 2014.

The scope of the public domain and special city centre projects outlined in the S94A CP is not sufficient to cater for increased densities above the "base controls" in the GLEP 2014. An alternative funding mechanism in addition to the S94A CP is required to fund the additional infrastructure required to support the increased densities and revitalisation of the Gosford City Centre.





A cooperative relationship with developers for the provision of this and other infrastructure is required. Developments which exceed the "base controls" of Gosford LEP 2014 are required to provide a significant public benefit. The significant public benefit is to be in the form a monetary contribution, works in kind, or material public benefit, which will be used to undertake community infrastructure which is an important aspect to the successful revitalisation of the Gosford City Centre.



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#### **4.4 What is Community Infrastructure?**

Community infrastructure in Gosford city centre refers to the civil infrastructure (excluding water and sewer provision), public domain, affordable housing and physical facilities that support the urban environment and benefit the population within the Gosford City Centre and includes a public purpose as defined in the Act.

The community infrastructure to be provided is infrastructure over and above that detailed in the S94A CP and in addition to any requirements for improvements or infrastructure that may arise from consideration of a development application by the consent authority under section 79C of the Act.

#### **4.5 The Planning Framework**

##### **Gosford Local Environmental Plan 2014**

The GLEP 2014 is the principle environmental planning instrument that controls and regulates development in that part of the Central Coast Council area previously located within the former Gosford local government area. It is accompanied by a series of maps, including Land Zoning, Height of Buildings and Floor Space Ratio.

Clauses 4.3 (Height of Buildings) and 4.4 (Floor Space Ratio) of GLEP 2014 sets out the maximum height and floor space ratio and are the "base controls" for development.

GLEP 2014 can be viewed at [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au) or [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

##### **Gosford Development Control Plan 2013**

GDCP 2013 supports the controls set out in GLEP 2014 and contains provisions which outline the detailed development and design controls to achieve high quality development for the Gosford City Centre.

##### **Gosford City Council Section 94A Development Contributions Plan – Gosford City Centre**

Section 94A of the Act enables the consent authority to levy contributions from developers by condition of development consent. The levy is applied towards the cost and delivery of the works required within the community as a result of development as identified in the S94A CP. The Council may at its discretion accept the dedication of land or the provision of a material public benefit or works-in-kind in part or full satisfaction of a Section 94A levy under this plan.





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## **Planning Agreements**

Planning Agreements are governed by section 93F of the Act. Planning Agreements are commonly referred to as Voluntary Planning Agreements (VPAs). They are legal agreements between a planning authority and a developer, under which the developer voluntarily agrees to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit or any combination of them, to be used towards a public purpose.

All VPA's are required to be publicly exhibited for a minimum period of 28 days. The public exhibition is accompanied by an "explanatory note" that outlines the public benefits being proposed by the applicant. The public exhibition ensures transparency to all stakeholders and allows the public benefit to be clearly demonstrated.

### **4.6 How is the value of community infrastructure assessed?**

To ensure a consistency, equitable and transparent provision of a significant public benefit that is a result of development being undertaken above the "base controls" in the proposed commercial core as shown in Figure 1, Council will use a dollar rate to establish the value of gross floor area over that which can be achieved by Clause 4.3 and Clause 4.4 of the GLEP 2014.

The dollar rate used to establish the value of the gross floor area will be assessed on the market value of the uplift in land value at the time of negotiation of the Voluntary Planning Agreement.

The total dollar value is calculated on the amount of gross floor area will be assessed on the market value of the uplift in land value at the time of negotiation of the VPA.

### **4.7 What is the Voluntary Planning Agreement Process?**

The VPA is the legal instrument that sets out the applicant's offer to make a significant public benefit by way of a monetary contribution towards the provision of community infrastructure. The details of the significant public benefit are to be incorporated into a VPA which is prepared and finalised as required by the Act and the Regulation.



## **ATTACHMENT B - GOSFORD CITY CENTRE COMMERCIAL CORE BONUS INCENTIVES DEVELOPMENT APPLICATION AND BONUS FLOORSPACE MONITORING PROCEDURE**

### **1. Purpose**

The procedure sets out the process for application and monitoring of Bonus Floorspace under the Commercial Core Bonus Incentives clause of GLEP 2014.

### **2. Application**

This procedure applies to all Development Applications (DA) accessing additional height and/or floorspace under the Commercial Core Bonus Incentives clause of GLEP 2014.

### **3. Background**

The Commercial Core Bonus Incentives clause in GLEP 2014 allows for a bonus pool of floorspace of 150,000m<sup>2</sup>. The clause also requires that once the additional cumulative floor space applied for under the clause reaches 120,000m<sup>2</sup> that Council review the clause to determine whether the policy objectives of the clause remain valid and whether the clause is securing Council's objectives.

In order to build on development interest in the city centre in the short term and stimulate activity it is proposed to limit the operation of the new clause to a period of 2 years from the date it comes into effect.

To ensure that development applications reliant on the additional bonus floor space are developed and not land banked, the development consent will be limited to a period of 2 years. If development has not commenced and/or the consent condition relating to the provision of public benefit has not been complied with the consent will lapse. The bonus floorspace allocated to that consent would be returned to the "pool" of bonus floor space for use by other applicants.

In accordance with the Planning Proposal and Council Reports relating to the Commercial Core Bonus Incentives "Bonus Pool of Floorspace" any floorspace which exceeds the mapped LEP controls in development consents within the B3 Commercial Core zone granted since 21 May 2015 will be deducted from the 150,000m<sup>2</sup>.

In order to provide transparency and clarity for developers, the community and Council staff with regard to the amount of bonus floorspace that has been allocated and the amount that remains available, Council will make the information publicly available. This material will be made available





on Council's web site and updated as bonus floorspace is allocated or is returned to the bonus pool of floorspace.

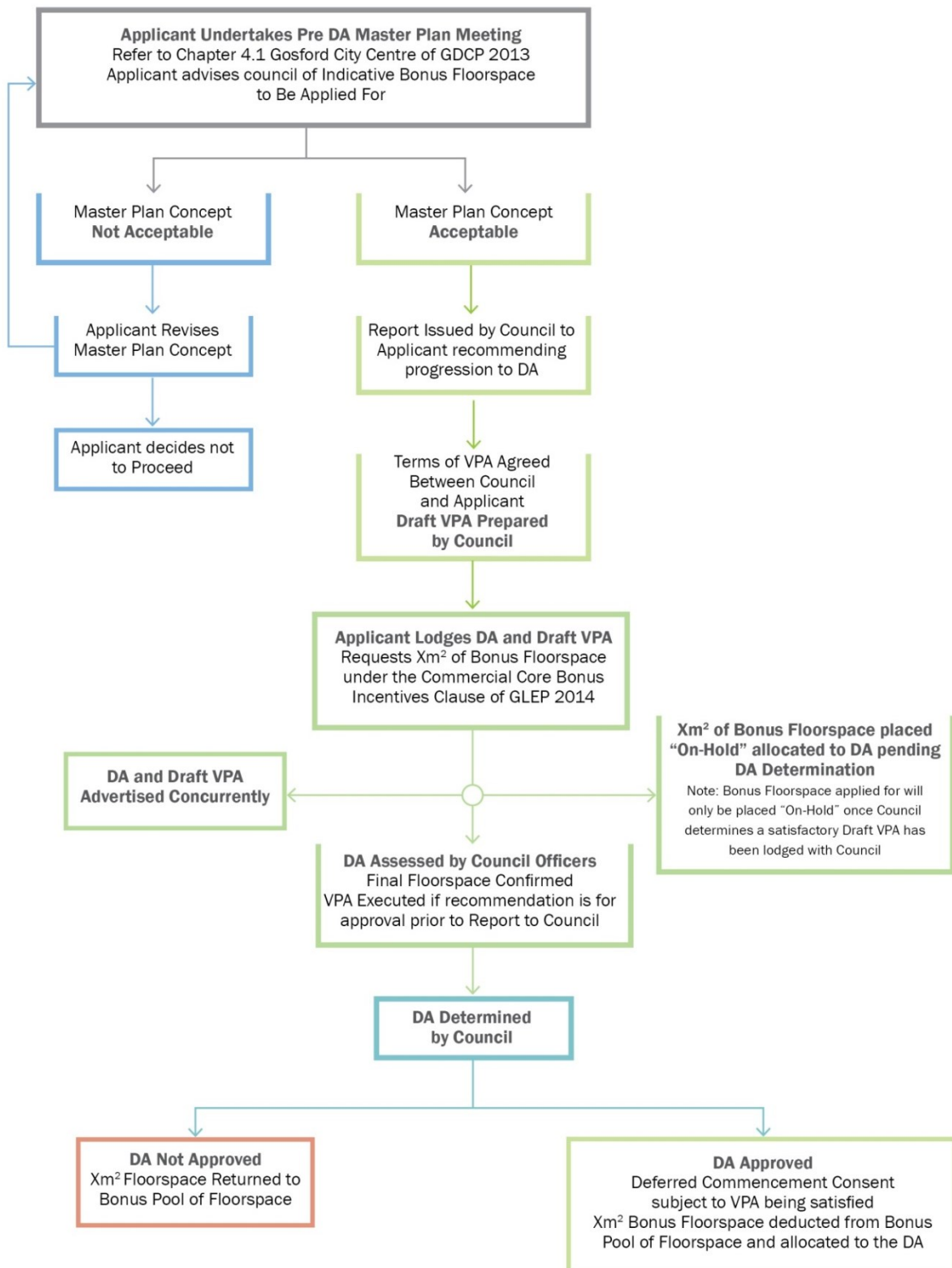
#### **4. Development Application Procedure**

Where additional height and/or floorspace is sought for a development under the Commercial Core Bonus Incentives clause in the Gosford Local Environmental Plan 2014 the following procedure is to be followed.



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## Gosford Commercial Core Bonus Incentives – DA Procedure





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## 5. Bonus Floorspace Monitoring Procedure

The Commercial Core Bonus Incentive Clause allows for 150,000m<sup>2</sup> bonus floorspace. An Applicant may apply for bonus floorspace subject to compliance with certain requirements outlined in the GLEP 2014 and GDCP 2013.

Once a development application requesting bonus floorspace under the Commercial Core Bonus Incentives Clause of GLEP 2014 and the terms of any VPA have been agreed between Council and the Applicant, in accordance with above procedure the requested amount of floorspace will be put on hold and temporarily deducted from the total bonus floorspace available. This information will then be updated in the table below, and the updated information will be placed on Council's web site for public information.

Once the DA is assessed, if the recommendation is for approval the draft VPA must be executed with Council prior to the DA being determined by Council and the development consent being issued. Once the consent is issued the approved amount of bonus floorspace will then be deducted from the total bonus floorspace available. The Bonus Floorspace table on Council's website will then be updated.

Once the bonus floorspace granted reaches or exceeds 120,000m<sup>2</sup> Council's Strategic Planning Unit will review the application of the clause.

If the DA is not commenced within the two year consent period the consent will lapse and the bonus floorspace approved in the DA will be returned to the Bonus Floorspace available to applicants.

Where an applicant intends to seek an amendment to a development consent Council will advise the applicant whether the proposed amendments are significant enough to warrant the Master Planning Provisions being required to be undertaken for the proposed amendments including amendments to any Voluntary Planning Agreements that are in place.

In accordance with the Planning Proposal and Council Reports relating to the Commercial Core Bonus Incentives "Bonus Pool of Floorspace" any floorspace which exceeds the mapped LEP controls in development consents within the B3 Commercial Core zone granted since 21 May 2015 will be deducted from the 150,000m<sup>2</sup>. As of October 2016 this includes the consents for DA 46256/2014 Mariners Plaza and DA 47046/2015 Waterside, DA 47056/2015 Bonython Tower as outlined in the Available Bonus Floorspace Table below.







Any other development within the commercial core which accesses height and/or floorspace above the maximum LEP controls and approved prior to the adoption of the Commercial Core Bonus Incentive LEP clause will be treated in the same manner.



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## 6. Amending this Procedure

This procedure, attached, being an administrative process, may be altered as necessary by the Chief Executive Officer.



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