

Georges River Council Policy on Planning Agreements

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1 Introduction

- 1.1 This Policy is known as the Georges River Council Policy on Planning Agreements (the **Policy**).
- 1.2 It sets out Georges River Council's policy and procedures relating to planning agreements under s 93F of the *Environmental Planning and Assessment Act 1979*.
- 1.3 This Policy was adopted by resolution of the Council on 1 August 2016 and became effective on 10 August 2016.
- 1.4 This Policy applies to land and development within the local government area of Georges River Council. This policy also applies to land outside the Georges River Local Government Area (**LGA**) in the case of a joint planning agreement between the Council and another council or planning authority in regard to land outside the Georges River LGA.
- 1.5 In this Policy, the following terminology is used:

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

Council means Georges River Council,

Developer is a person who has:

- (a) sought a change to an environmental planning instrument; or
- (b) made or proposes to make, a development application; or
- (c) entered into an agreement with or is otherwise associated with, a person to whom paragraph (a) or (b) applies,

Development application has the same meaning as in the Act,

Development contribution means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit. Appendix F sets out guidance in relation to suggested public benefits applicable and desirable within the Council's LGA,

Explanatory note means a written statement made by a planning authority in accordance with clause 25E 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 (this includes the making, amendment or repeal of an instrument),

Land value capture means a public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of the increase in the unimproved land value arising from:

- (a) an Instrument change which facilitates development, plus associated or consequential changes to any Georges River development control plan; or

- (b) the granting of a development consent which allows development to exceed development standards or other development controls under the *Hurstville Local Environmental Plan 2012* *Kogarah Local Environmental Plan 2012* (the **LEP**) or another environmental planning instrument,

Net public benefit means a public benefit that exceeds the benefit provided by specific measures that address the impacts or potential impacts of a planning proposal or development on surrounding land,

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

Planning proposal has the same meaning as in the Act,

Practice Note means the Practice Note on Planning Agreements published by the NSW Department of Infrastructure Planning and Natural Resources (July 2005) as may be amended (see **Appendix A**),

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 includes (without limitation) any of the following:

- (a) the provision of (or the recoupment of the cost of providing) public amenities or public services;
- (b) the provision of (or the recoupment of the cost of providing) affordable housing;
- (c) the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land;
- (d) the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
- (e) the monitoring of the planning impacts of development; and
- (f) the conservation or enhancement of the natural environment,

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

Surplus value means the value of the developer's contribution 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 s 80A(1) of the Act and the value of development contributions that are or could have been required to be made under s 94 or s 94A of the Act in respect of the subject of the agreement,

VPA Officer means a person appointed by the Council, or General Manager of the Council, to have the function of negotiating and considering a proposed planning agreement on behalf of Council,

Works in kind means a work or action which replaces a monetary contribution in whole or in part.

- 1.6 The Council's current legal and procedural framework for planning agreements is set by the following:
- (a) the provisions of Subdivision 2 of Division 6 of Part 4 of the Act;
 - (b) the provisions of Division 1A of Part 4 of the Regulation;
 - (c) the Practice Note;
 - (d) the Independent Commission Against Corruption Development Assessment Internal Audit Tool; and
 - (e) this Policy.
- 1.7 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.
- 1.8 It is intended that this Policy will be periodically reviewed and, depending on the outcome of any review, may be updated from time to time. The updates may cover additional matters to those covered in this Policy or provide more detailed information or guidance on specific matters covered in this Policy. The Residual Land Value table in **Appendix E** may be amended on an as needs basis separately to a review of this Policy.

2 Principles on the use of planning agreements

- 2.1 This section sets out the principles and framework on the use of planning agreements.

Council's policy objectives

- 2.2 The objectives of this Policy are to:
- (a) establish the Council's policy on the use of planning agreements;
 - (b) to provide an enhanced and more flexible development contributions system for the Council;
 - (c) to supplement or replace, as appropriate, the application of s 94 or s 94A of the Act to development;
 - (d) establish a clear and transparent framework governing the use of planning agreements by the Council;
 - (e) ensure that the framework for planning agreements is, consistent, efficient, fair, and accountable;

- (f) establish a probity framework for the negotiation, preparation and implementation of planning agreements;
- (g) provide a framework that allows for development contributions to be informed by and/or based on the concept of land value capture or alternative mechanisms;
- (h) facilitate the provision of public facilities, services and amenity outcomes that align with the Council's corporate and strategic planning context; and
- (i) enable the provision of development contributions above those required to address the direct impact of a particular development on neighbouring land and the wider community.

Principles of planning agreements

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

- (a) planning decisions must not be bought or sold through planning agreements;
- (b) the Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act or law;
- (c) the Council will not use planning agreements for any purpose other than a proper planning purpose;
- (d) the consideration, negotiation and assessment of a proposed planning agreement will be separate from the consideration of the planning merits of a development application or a planning proposal;
- (e) the Council will not use planning agreements as a means to overcome revenue raising or spending limitations to which it is subject or for other improper purposes;
- (f) development that is unacceptable on planning grounds will not be permitted because of public benefits offered by developers that do not make the development acceptable on planning grounds;
- (g) the Council will not seek benefits under a planning agreement that are wholly unrelated to the development;
- (h) in assessing a development application or planning proposal, the Council will not take into consideration planning agreements that are wholly unrelated to the subject matter of the development application or planning proposal, nor will the Council give disproportionate weight to a planning agreement;
- (i) the Council will not allow the interests of developers, individuals or interest groups to outweigh the public interest when considering a proposed planning agreement;

- (j) the Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements; and
- (k) where the Council has a commercial stake in development 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 interests in the development.

When may the Council consider entering into a planning agreement?

2.4 The Council may consider entering into a planning agreement:

- (a) when a developer:
 - (i) proposes to, or has made a request for an Instrument change to facilitate the carrying out of development; or
 - (ii) proposes to, or has made, a development application; or
 - (iii) has entered into an agreement with, or is otherwise associated with, a person to whom (i) or (ii) applies.

2.5 Where the Council requires a planning agreement to be entered into as a condition of development consent, the planning agreement must be in the terms of an offer made by the developer in connection with the:

- (a) development application; or
- (b) request for an instrument change.

2.6 Notwithstanding the above, the Council is not obliged to enter into a planning agreement with a developer.

Acceptability test

2.7 The Council will apply the following test when determining the acceptability of a proposed planning agreement.

2.8 Does the planning agreement:

- (a) satisfy the statutory requirements for planning agreements contained in the Act and the Regulation;
- (b) comply with the principles set out in clause 2.3 of this Policy;
- (c) be directed towards a proper or legitimate planning purpose ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development and the circumstances of the case;
- (d) provide for public benefits that bear a relationship to the development that is not wholly unrelated to the development;

- (e) produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- (f) provide for reasonable means of achieving the relevant purposes and outcomes and securing the benefits;
- (g) protect the communities reasonable planning expectations and avoid environmental harm; and
- (h) ensure the quantum of the public benefit offered is commensurate with the value of the development contributions which the Council considers are reasonably due in the circumstances.

2.9 In addition to the Acceptability Test, the Council must consider if there are any relevant circumstances that may operate to preclude the Council from entering into the proposed planning agreement.

Provisions of planning agreements relating to s 94 and s 94A

2.10 A planning agreement may wholly or partly exclude the application of s 94 or s 94A of the Act to development that is the subject of the planning agreement.

2.11 This is a matter to be negotiated between the Council and a developer having regard to the circumstances of the case.

2.12 However, where the application of s 94 and s 94A of the Act to development are not excluded by a planning agreement, the Council will generally not agree to a provision allowing benefits under the planning agreement to be taken into consideration in determining a development contribution under s 94. Section 94 and 94A conditions must comply with Council's s 94 and s 94A plans and the Act.

Relationship between planning agreements and clause 4.6 of the LEP

2.13 Any variation to development standards under clause 4.6 of the LEP, as part of a development application sought in connection with a planning agreement, will not be permitted by the Council unless the Council is of the opinion that the dispensation sought under clause 4.6 meets the relevant test on its own planning merits.

Costs of negotiating, preparing and monitoring a planning agreement

2.14 The Council will generally require a planning agreement to make provision for payment by the developer of the Council's costs of negotiating, preparing, and executing the planning agreement, as well as monitoring, enforcing and administering the planning agreement.

Preparation and documentation of the planning agreement

2.15 Unless otherwise agreed, the Council will ordinarily prepare a planning agreement, based on the template in accordance with **Appendix B** at the developer's cost.

Council's Annual Report and Register

- 2.16 The Act requires that where the Council has entered into a planning agreement, while the planning agreement is in force, that Council must include in its annual report particulars of compliance with and the effect of the planning agreement during the year to which the annual report relates
- 2.17 Council is to keep a register of any planning agreements that apply to land within the Council's area, whether or not the Council is a party to a planning agreement. The Council is required to record in the register the date an agreement was entered into and a short description of the agreement (including any amendment).
- 2.18 The Council will make the following available for public inspection (free of charge) during ordinary office hours:
- (a) the planning agreement register kept by the Council;
 - (b) copies of all planning agreements (including amendments) that apply to the area of the Council; and
 - (c) copies of the explanatory notes relating to those agreements or amendments.

Dispute resolution

- 2.19 The Council will require a planning agreement to provide for a dispute resolution mechanism between the parties to the planning agreement.

3 Probity

- 3.1 Public probity is important to Georges River Council and it will ensure that the negotiation of all planning agreements is fair, transparent and directed at achieving public benefits in an appropriate manner, free of corruption.
- 3.2 Noting this, the Council will:
- (a) provide a copy of this policy to any person who seeks to enter into a VPA with Council;
 - (b) publish this policy on Council's website and promote the general awareness of this policy;
 - (c) comply with public notification requirements in the Act;
 - (d) ensure appropriate delegations and separation of responsibilities in relation to:
 - (i) the assessment of planning proposals and development applications; and
 - (ii) the consideration and negotiation of planning agreements.
 - (e) ensure that modifications to approved development must be subject to the same scrutiny as the original development application;

- (f) ensure that Councillors and Council staff understand their particular role and responsibility, some of which carry the potential for conflicts of interest; and
- (g) take every step to ensure that conflicts of interest are avoided to the greatest extent possible – specifically, independent assessment by third parties where Council has an interest and not entering into any contractual arrangement which purports to fetter Council's discretion or guarantee outcomes that are subject to a separate regulatory processes.

3.3 The procedures that will be implemented to address these matters may include, but not be limited by, the following procedures:

- (a) the Councillors will not be involved in the negotiation of the planning agreement but will ultimately decide whether the Council should enter into a planning agreement as part of their duties as Councillors;
- (b) the VPA Officer will be responsible for negotiating a planning agreement on behalf of the Council in accordance with this Policy;
- (c) the Council will, in all cases, ensure that Council staff with key responsibility for assessing development applications, approving applications, assessing planning proposals or ensuring compliance, do not have a role in the assessment of the commercial aspects of the planning agreement nor on the conditions of the planning agreement except where advice is required on matters relating to the development application or planning proposal, such as conditions of consent for a particular proposal;
- (d) the Council may involve an independent person(s) to facilitate or otherwise participate in the negotiations or aspects of it, particularly where this will lead to a better planning outcome;
- (e) the Council may appoint a probity advisor, particularly in cases where there may be a risk of conflict of interest, or where there is significant public interest;
- (f) the Council will ensure that all negotiations with a developer and their consultants are sufficiently documented; and
- (g) where the Council has a commercial stake in development the subject of an 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, including appointing an independent person(s) and/or probity advisor.

4 Negotiation procedures

General principles

- 4.1 The Council's negotiation system for planning agreements aims to be transparent, consistent, efficient, fair, and accountable.
- 4.2 The Council will negotiate planning agreements independently from the planning proposal and/or development assessment and determination processes.

- 4.3 The system seeks to ensure that the negotiation of planning agreements runs in parallel with applications for instrument changes or development applications.
- 4.4 As planning agreements are required by the Act to be publicly exhibited, a planning agreement must be negotiated, drafted and be in a final draft form that will enable it to be publicly exhibited.
- 4.5 The Council prefers that a developer makes an offer to enter into a planning agreement at the same time as lodgement of a planning proposal or development application

Who will negotiate a planning agreement on behalf of the Council

- 4.6 The VPA Officer will negotiate a planning agreement on behalf of the Council. The councillors will not be involved in the negotiation of the planning agreement.

Separation of the Council's planning assessment and negotiation roles

- 4.7 The Council will ensure that the person who assesses the development application or planning proposal, to which a planning agreement relates, is not the same person or a subordinate of the person who negotiated the key commercial terms of the planning agreement on behalf of the Council.
- 4.8 The Council will nominate the VPA Officer to be the representative of the Council in all negotiations regarding the key commercial terms of any proposed planning agreement.
- 4.9 The VPA Officer will not have any involvement with the assessment of the development application or planning proposal to which the proposed planning agreement relates.
- 4.10 If any person reporting to the VPA Officer is involved with the draft planning agreement, that person shall be bound by the same provisions of this Policy in respect of interaction with Council officers assessing the development application or planning proposal and conflicts of interest.
- 4.11 The Council will ensure the VPA Officer does not have any conflict of interest, pecuniary or otherwise, within the meaning of Council's Code of Conduct in respect of the subject matter of the planning agreement or the development application or planning proposal to which it relates.
- 4.12 If the VPA Officer considers that she or he may have such a conflict, that person must immediately advise the Council in writing and a different VPA Officer, or if necessary an independent third party, must be appointed.

Involvement of independent third parties in the negotiation process

- 4.13 The Council will encourage the appointment of an independent person to facilitate or participate in the negotiations, or aspects of it, particularly where:
 - (a) an independent assessment of a proposed instrument change or development application is necessary or desirable;
 - (b) factual information requires validation in the course of negotiations;

- (c) sensitive financial or other confidential information must be verified or established in the course of negotiations;
- (d) facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved; and
- (e) dispute resolution is required under a planning agreement.

4.14 The costs of the independent person will be borne by the developer.

Negotiation steps for planning agreements

4.15 Before the lodgement of the relevant development application or planning proposal by the developer, the Council staff and the developer will decide whether to negotiate a planning agreement.

4.16 At this time, Council's VPA Officer will be responsible for all functions with regard to the proposed planning agreement. Alternatively, Council's General Manager will be involved and negotiate the proposed planning agreement, at the General Manager's discretion.

4.17 If the developer is not the owner of the relevant land, the landowner must be an additional party to the proposed planning agreement.

4.18 After the parties have decided to negotiate a planning agreement, the negotiation of that agreement will generally involve the following key steps, which may be varied on a case by case basis:

- (a) The developer will advise the Council of the person that will represent them in the negotiations.
- (b) A timetable for negotiations will be agreed between the VPA Officer and developer.
- (c) The key commercial issues for negotiation will be identified by the VPA Officer and the developer, and the negotiations over these issues will then take place.
- (d) If agreement is reached on commercial terms, the developer must make a formal letter of offer to enter into the planning agreement with Council. The letter of offer is to be submitted by the developer contemporaneously with the planning proposal or the development application. The developer may submit a draft planning agreement with the letter of offer.
- (e) The draft planning agreement is to be prepared based on Council's template attached to this Policy and include all material terms.
- (f) The VPA officer is to consider relevant stakeholders and policies when negotiating the planning agreement.
- (g) For draft planning agreements which relate to a planning proposal, the draft planning agreement is to be reported to a Council meeting, together with the planning proposal, prior to proceeding to a Gateway Determination.

- (h) The Council will publicly exhibit the development application or planning proposal (following the issue of a Gateway determination) and draft planning agreement in accordance with the Act and this Policy. Council will generally require that public exhibition of the draft planning agreement occurs at the same time as public exhibition of the planning proposal or development application.
- (i) The VPA Officer may negotiate further changes to the draft planning agreement having regard to any matters raised following public notification and exhibition.
- (j) If agreement on terms of the planning agreement has been reached, it has been exhibited, and any further changes negotiated are agreed, the VPA Officer will prepare a report for Council with recommendations with regard to the planning agreement.
- (k) The planning agreement will need to be executed by the Developer prior to the meeting of Council for a decision on whether to enter into the planning agreement.
- (l) The planning agreement will generally be considered by Council at the same time as the meeting for determination of the relevant development application or decision to proceed with the planning proposal.

4.19 Indicative flow charts that show the steps to be followed during a planning agreement negotiation for both a planning proposal and a development application can be found at **Appendix G** and **H** respectively.

Public authority consultation

4.20 Relevant public authorities will generally be consulted in relation to the development application or planning proposal and planning agreement during the process outlined in paragraph 4.18. Any consequential amendments that may be required to the development application or planning proposal and/or proposed planning agreement as a consequence of those consultations will be discussed with the applicant.

Negotiation steps for planning agreements for Council owned land

4.21 Council will follow the same process when negotiating a planning agreement for Council owned land. The Council may appoint an independent person(s) or probity advisor in this circumstance.

5 Assessment and application of funds

5.1 This section explains:

- (a) general principles on contributions;
- (b) how Council will calculate what the appropriate contributions are for a development application or planning proposal; and

- (c) how Council will value the public benefits offered under a planning agreement.

Value and form of development contributions under a planning agreement

- 5.2 The following matters regarding the value and form of development contributions need to be determined prior to reporting to Council, the:
- (a) monetary value of the contribution to be made;
 - (b) value of any land that is to be dedicated; and
 - (c) value of the material benefit to be contributed.
- 5.3 Where either a planning proposal is proposed, or development consent is sought, which will result in an exceedance of development standards, resulting in an inherent increase in value of the land or development, the concept of land value capture may be used to assess the appropriate contribution. This concept may be applied in addition to other considerations in relation to the level of contributions.

Standardising contributions

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

Pooling of monetary contributions

- 5.5 Where a proposed planning agreement provides for a monetary contribution by the developer, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other 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 such as that listed in **Appendix F**, to be provided in a fair and equitable way.

Application of recurrent funds

- 5.6 The Council may request developers, through a planning agreement, to make development contributions towards the recurrent costs of public facilities.
- 5.7 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 planning agreement may only require the developer to make contributions towards the recurrent costs of the facility, for a limited time, until, for example, a public revenue stream is established to support the ongoing costs of the facility.

Methods for calculating contributions due

- 5.8 In calculating the appropriate amount of contributions due under a planning agreement, Council will differentiate between:
- (a) a development application that complies with all development standards and controls;
 - (b) a development application that exceeds development standards and controls; and
 - (c) a planning proposal.

Calculation of contributions due for a development application that does not comply with development standards

- 5.9 Where development proposed in a development application does not comply with development standards and controls and it will, if approved, result in an increase in value of the land or the development, Council will determine appropriate contributions by applying either land value capture as set out in paragraphs 5.11 - 5.17 or use an alternative mechanism which Council considered appropriate.

Calculation of contributions for a planning proposal

- 5.10 Where a planning proposal is likely to result in an increase in value of the unimproved land the subject of the planning proposal, Council will determine appropriate contributions by applying land value capture as set out in paragraphs 5.11 - 5.17 or use an alternative mechanism which Council considered appropriate.

Land value capture

- 5.11 For the purposes of this Policy, land value capture is a public financing mechanism implemented through planning agreements by which the Council captures for the community's benefit a share of the unearned increment to developers in land value increases arising from:
- (a) an instrument change which facilitates development, plus associated or consequential changes to any Hurstville or Kogarah Development Control Plan(s); or
 - (b) the grant of a development consent which allows development to exceed the otherwise permissible development controls under the LEP or another environmental planning instrument.
- 5.12 Land value capture is distinguishable from development contribution mechanisms under s 94 and s 94A of the Act in that it is focussed on value sharing between the Council on behalf of the community and developers, rather than on financing the costs to the Council of addressing particular impacts of development such as the need for public open space and recreational facilities, community facilities, road improvements and traffic management.
- 5.13 The formula for calculating a monetary contribution associated with value capture is provided below.

$$C = \frac{RLV(2) - RLV(1)}{2}$$

Where:

C	=	Monetary contribution
RLV (2)	=	Residual land value of a site following either an instrument change, plus associated or consequential changes to any Hurstville or Kogarah Development Control Plan(s), applying to the site, or the consent to development on the site allowing an exceedance of development standards or other planning controls, which in both cases allow intensified development.
RLV (1)	=	Residual value of a site under the existing the LEP and Hurstville or Kogarah Development Control Plan provisions.

- 5.14 RLV(2) and RLV(1) are to be determined by the land values in the table contained in **Appendix E** for land within the Hurstville City Centre and Kogarah Town Centre as defined by the Figures 1 and 2 in the **Appendix E**.
- 5.15 If there is a dispute between Council and the developer with respect to RLV(1) and/or RLV(2), the developer will be required to provide the Council with sufficient details, costs and valuations to determine a realistic figure for the residual land values under the existing and altered statutory planning controls, or resulting from the exceedance of development standards/planning controls.
- 5.16 Such documentation provided to the Council is to be verified by a certified practising valuer or a qualified and experienced land economist, or both if necessary. The Council's staff responsible for the planning agreement may engage an independent land economist and other specialists to review information provided by the developer. Costs incurred by the Council will be met by the developer.
- 5.17 Proposed changes to the LEP contained in a planning proposal may be amended following the public consultation stage. In that case, further negotiations regarding the offer may occur having regard to changes in development potential and viability. Consequential amendments to the planning agreement may occur.

Dedication of land

- 5.18 Unless otherwise agreed, where the benefit under a planning agreement is the provision of land for a public purpose, the Council will generally seek to value the benefit on the basis of the value of the land being dedicated, taken from the table of land values contained in **Appendix E**, for specific zones within the Georges

River LGA. Council will apply the table within the relevant zone and multiply it by the area of the land to be dedicated. The table is to be updated on an as needs basis.

- 5.19 If there is no corresponding value applicable in **Appendix E**, then Council will seek to estimate the value of the land proposed to be dedicated as if it were to be valued under the *Land Acquisition (Just Terms Compensation) Act 1991* following the compulsory acquisition of the land.

Works in kind

- 5.20 Unless otherwise agreed, Council will generally value the benefit of work in kind by adopting the valuation method that would ordinarily be adopted by a quantity surveyor. Council may require the applicant to provide a valuation, including report by a quantity surveyor, if there is any dispute regarding the infrastructure value for works in kind.

Other material public benefits

- 5.21 Where a planning agreement provides for 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 planning agreement.

Monetary contributions

- 5.22 Monetary contributions will be subject to regular adjustment against increases or decreases in CPI. The final amount due will be calculated immediately prior to the time of payment.

Credits and refunds

- 5.23 The Council will not agree to a planning agreement providing for the surplus value under a 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.

6 Public notification & exhibition of planning agreements

Public notification

- 6.1 In accordance with the Act, a proposed planning agreement must be publicly notified and available for public inspection for a minimum of 28 days.
- 6.2 Where possible, Council will seek to publicly notify a proposed planning agreement, together with the development application or planning proposal to which it relates.
- 6.3 Where the development application or planning proposal to which a 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, the Council will publicly notify the planning agreement and make it available for public inspection for that longer period.

- 6.4 The development application or planning proposal, proposed planning agreement and explanatory note are to be publicly exhibited in accordance with the specific requirements of the Act and Regulation.

Re-notification

- 6.5 The Council will publicly re-notify and make available for public inspection a proposed planning agreement and the development application or planning proposal to which it relates if, in the Council's opinion, a material change is made to the terms of the agreement or the development application or planning proposal after it has been previously publicly notified and inspected.

Public comments on planning agreements

- 6.6 The Council encourages the public to make submissions on planning agreements. This will allow the Council to better understand local needs and permit fine tuning of the planning obligations set out in any planning agreement.
- 6.7 Public submissions to planning agreement notifications will be assessed by the Council in accordance with this Policy.

Consideration of a planning agreement

- 6.8 Council's VPA Officer will assess the merits of a proposed planning agreement and public submissions in accordance with this policy and report that to Council.
- 6.9 In addition, where a development application has been lodged, the planning agreement and public submissions made in relation to that planning agreement will also be considered by the relevant planning officer in the determination of the development application as part of the overall merit assessment under s 79C of the Act.
- 6.10 This will be a separate arm's length assessment to that done by the VPA Officer.
- 6.11 The fact that the Council's VPA Officer approves the terms of a proposed planning agreement will not necessarily mean that the development application or planning proposal, to which the proposed planning agreement relates, is acceptable on its merits. The development application or planning proposal must be acceptable on planning grounds in the overall merit assessment.
- 6.12 The weight given to the proposed planning agreement and public submissions made in relation to that agreement is a matter for the Council acting reasonably.

7 Enforcement and management of planning agreements

Appropriate means of enforcement

- 7.1 Section 93F(3)(g) of the Act requires a planning agreement to provide for enforcement by suitable means. The suitable means will vary depending on the circumstances, but will typically include security and/or registration of the planning agreement on title.

Provision of security under a planning agreement

- 7.2 The Council will generally require a planning agreement to make provision for security by the developer for the developer's obligations under the planning agreement.
- 7.3 The form of security 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 planning agreement and on terms otherwise acceptable to the Council.

Registration of planning agreements

- 7.4 Section 93H of the Act permits a planning agreement (including where an agreement is amended) to be registered on the title to land, provided each person with an estate or interest in the land agrees to its registration.
- 7.5 Section 93H(3) provides that a planning agreement that has been registered on the title to land under s 93H is binding on, and enforceable against, the owner of the land from time-to-time as if each owner for the time being had entered into the agreement.
- 7.6 The Council will generally require a planning agreement to contain a provision requiring the developer to agree to registration of the planning agreement, pursuant to s 93H of the Act, if the requirements of that section are satisfied.

Notations on certificates under s 149(5) of the Act

- 7.7 Council will generally require a planning agreement to contain an acknowledgement by the developer that Council may, in its absolute discretion, make a notation about a planning agreement on any zoning certificate issued under s 149 of the Act relating to the land the subject of the agreement or any other land.

Entering into a planning agreement

- 7.8 A planning agreement is entered into when it is signed by all of the parties.
- 7.9 A planning agreement can be entered into at any time after the planning agreement is publicly notified in accordance with the Act and Regulation.
- 7.10 Council will typically require a developer to give an irrevocable offer and sign the planning agreement before the grant of development consent or prior to Council requesting that the Minister make the Instrument change referred to in the planning proposal.
- 7.11 If there is development application, the Council will generally require the planning agreement to be entered into as a condition of granting development consent to the development to which the planning agreement relates, particularly if the planning agreement has not yet been executed.

- 7.12 In such a case, a condition of consent may be imposed which is generally in the form set out in **Appendix D**, but only in terms of the developer's offer made in connection with the development application.
- 7.13 Council cannot include a condition of consent that requires a developer to enter into a planning agreement on different terms than offered, or if no planning agreement was offered.

Time when developer's obligations arise under a planning agreement

- 7.14 The Council will generally require a planning agreement to provide that the developer's obligations under the planning agreement and the payment of contributions will take effect when development consent is granted or when the relevant Instrument change is gazetted.

Hand-over of works

- 7.15 The Council will generally not accept the hand-over of a public work carried out under a 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 planning agreement and any applicable development consent.
- 7.16 The Council will also require the planning agreement to provide for a defects liability period during which any defects must be rectified at the developer's expense.

Management of land or works after hand-over

- 7.17 If a 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.
- 7.18 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 planning agreement.

Monitoring and review of a planning agreement

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

Modification or discharge of the developer's obligations under a planning agreement

- 7.21 The Council may agree to a provision in a planning agreement permitting the Developer's obligations under the planning agreement to be modified or

discharged where the modification or discharge is linked to the following circumstances:

- (a) the developer's obligations have been fully carried out in accordance with the planning agreement;
- (b) the developer has assigned/novated the developer's interest under the planning agreement in accordance with its terms and the assignee has become bound to the Council to perform the developer's obligations under the planning agreement;
- (c) the development consent to which the planning agreement relates has lapsed;
- (d) there has been a material modification to the development consent to which the planning agreement relates;
- (e) the performance of the planning agreement has been frustrated by an event beyond the control of the parties;
- (f) the Council and the developer otherwise agree to the modification or discharge of the planning agreement;
- (g) material changes have been made to the planning controls applying to the land to which the planning agreement applies; or
- (h) the revocation or modification by the Minister for Planning of a development consent to which a planning agreement relates.

7.22 Such a provision will require the modification or discharge of the planning agreement to be in accordance with the Act and Regulation.

Assignment and dealings by the developer

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

- (a) the developer and incoming party has, at no cost to the Council, either entered into a deed of novation or executed all necessary documents in favour of the Council by which that person agrees to be bound by the planning agreement as if they were a party to the original agreement; and
- (b) the Developer is not in breach of the planning agreement.

**Appendix A - Practice Note on Planning Agreements Department of Infrastructure
Planning and Natural Resources, July 2005**

Refer to the Department of Planning's website: <http://www.planning.nsw.gov.au>

Planning Agreement

Under s 93F of the *Environmental Planning and Assessment Act 1979*

Georges River Council

And

[insert party]

KEY DETAILS

1 **Date** See Execution on page 49

2 **Parties**

Council

Name

Georges River Council

ABN 57 789 014 855

Address

Civic Centre MacMahon Street Hurstville NSW 2220

Attention

##

Fax

##

Email

##

Developer

Name

Address

Attention

Fax

Email

Land

See definition of *Land* in clause ##

Development

See definition of *Development* in clause ##

**Development
Contributions**

See clause 9 and Schedule 1

**Application of s94,
s94A and s94EF of
the Act**

See clause ##

Security

See Part 4

Registration

See clause ##

**Restriction on
dealings**

See clause ##

Dispute Resolution

See Part 3

BACKGROUND

- A The Developer owns the Land.
- B The Developer has lodged the [Development Application/Planning Proposal].
- C The [Development Application/Planning Proposal] was accompanied by an offer by the Developer to enter into a planning agreement with Council under which the Developer would provide Development Contributions in the form of [a monetary contribution, public domain works, road upgrades, landscaping and the dedication of land] to Council if [Development Consent was granted to the Development Application/ the Amending LEP was made to facilitate the Planning Proposal].
- D The Developer and the Council have agreed that the Developer will make Development Contributions in connection with the [Development Application/Planning Proposal] in accordance with this Deed.

TERMS

Part 1 - Preliminary

1 Interpretation

1.1 Definitions

In this Deed the following definitions apply:

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

Amending LEP means the amendment to [insert relevant LEP title] to facilitate the implementation of the Planning Proposal.

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, state-owned corporation, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,

- (v) St George Bank Limited,
- (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

CPI means the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Dedication Plan means the plan in Schedule 3.

Deed means this planning agreement and includes any schedules, annexures and appendices to this deed.

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Development means the development [described in/contemplated by] the [Development Application/Planning Proposal].

Development Application means [insert details].

Development Consent has the same meaning as in the Act.

Development Contribution means, the dedication of land free of cost, the payment of a monetary contribution, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose (subject to the provisions of the Deed) and the other benefits included in Schedule 1, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s93F(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

GST has the same meaning as in the GST Law.

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

Item means specified in Column 1 of Schedule 1.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Key Details means the section of this agreement headed Key Details.

Land means [insert details].

Location Plan means the plan in Schedule 4.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Deed.

Planning Proposal means the proposal as set out in [insert details] to be facilitated by the making of the Amending LEP.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with CPI from the date of this Deed.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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

- (a) Except as otherwise provided in this Deed, words in this Deed have the same meaning as those words have in the Act;
- (b) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (c) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (d) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- (e) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (f) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.

- (g) A reference in this Deed 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.
- (h) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (i) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (j) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (k) 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.
- (l) 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 genders.
- (m) References to the word 'include' or 'including' are to be construed without limitation.
- (n) A reference to this Deed includes the agreement recorded in this Deed.
- (o) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (p) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- (q) Any schedules, appendices and attachments form part of this Deed.
- (r) Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- (a) have full capacity to enter into this Deed, and
 - (b) are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development Application in so far as the subject matter of the proceedings relates to this Deed.
- 7.2 Clause 7.1 does not restrict the Developer or person with the benefit of the Development Consent issued in relation to the Development Application from commencing an appeal in the Land and Environment Court in relation to any subsequent development application or application to modify the Development Consent the subject of this Deed, provided that the subject matter of the appeal does not relate to this Deed or any condition of Development Consent requiring entry into this Deed.

8 Application of s 94, s 94A and s 94EF of the Act to the Development

- 8.1 This Deed [does/does not] exclude the application of s 94, s 94A or s 94EF to the Development.

Part 2 - Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards any public purpose for which it is made (as specified in column 2 of the Table in Schedule 1) and otherwise in accordance with this Deed.
- 9.3 Despite clause 9.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

- 9.4 If no public purpose is specified for a Development Contribution in Schedule 1, the Council may apply the Development Contribution towards any purpose, which need not be a public purpose.

10 Dedication of land [use where appropriate]

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (b) the Council is given:
 - (i) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (ii) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (iii) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 10.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 10.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 10.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 10.5 If Council withholds approval to any encumbrances and affectations under clause 10.4, and the Developer cannot dedicate the land free from those encumbrances and affectations, then the Council will compulsorily acquire the land and clause 26 will apply to the acquisition.
- 10.6 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 10.1(b) not later than 28 days after the Work is completed for the purposes of this Deed.

11 Approval of design of Works [use where Works are to be carried out by Developer]

- 11.1 Council is to approve the design and specifications for the Works which are Items [insert] in Part B of the table to Schedule 1 (Specified Works) prior to any Approval for the Specified Works being sought.
- 11.2 Prior to commencing any work on the detailed design of the Specified Works, the Developer is to request that Council provide the Developer with its requirements for the location, design, materials, specifications, capacity and timing for the provision of the Specified Works.
- 11.3 The Council is to act reasonably when specifying its requirements for any Specified Works and Council's requirements must:
- (a) not be inconsistent with the details contained in Schedules 2, 4 and 5; and
 - (b) not require works beyond or outside the scope of the Specified Works.
- 11.4 Once the Developer receives Council's requirements for the Specified Works under clause 11.2, the Developer is to provide the detailed design for the Specified Works to Council for Council's approval.
- 11.5 The Developer is to make any reasonable change to the detailed design for the Specified Works required by the Council, provided those changes must:
- (a) not be inconsistent with the details contained in Schedules 2, 4 and 5; and
 - (b) not require works beyond or outside the scope of the Specified Works.
- 11.6 The Developer is to bear all reasonable costs associated with obtaining the Council's approval to the detailed design of Specified Works under this clause.

12 Carrying out of Work [use where appropriate]

- 12.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council in accordance with clause 11, any relevant Approval and any other applicable law.
- 12.2 The Developer, at its own cost, is to obtain any Approvals necessary for the carrying out of the Work and is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

13 Variation to Work [use where appropriate]

- 13.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 13.2 Without limiting clause 13.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

- 13.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 13.2. Council is to provide a response to the request for a variation within 14 days of the developer's submission in writing being received.
- 13.4 Should a response to a request for variation not be provided by Council within 14 days, the parties agree that the variation request is to be taken as approved.
- 13.5 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner only if the variation:
- (a) is not Inconsistent with the details contained In Schedules 2, 4 and 5; and
 - (b) does not require works beyond or outside the scope of the Specified Works.
- 13.6 The Developer is to comply promptly with a reasonable direction referred to in clause 13.5 at its own cost.

14 Access to land by Developer [use where appropriate]

- 14.1 The Council authorises the Developer to enter, occupy and use any Council land on which the Works are to be located for the purpose of performing its obligations under this Deed.
- 14.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed. For the purpose of this clause reasonable notice is taken to be 14 days.
- 14.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 14.1 or 14.2.

15 Access to land by Council [use where appropriate]

- 15.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 15.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 15.1. For the purpose of this clause reasonable notice is taken to be 14 days.
- 15.3 Council cannot enter land pursuant to clause 15.1 for the purpose of remedying a breach by the Developer unless Council has first complied with clause 27 of this Deed.

16 Council's obligations relating to Work [use where appropriate]

- 16.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

17 Protection of people, property & utilities

- 17.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- (a) all necessary measures are taken to protect people and property,
 - (b) unnecessary interference with the passage of people and vehicles is avoided, and
 - (c) nuisances and unreasonable noise and disturbances are prevented.
- 17.2 Without limiting clause 17.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

18 Repair of damage [use where appropriate]

- 18.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 18.2 The Developer is to carry out its obligation under clause 18.1 at its own cost and to the satisfaction of the Council, in accordance with the specifications required by Council as set out in Clause 11.

19 Completion of Work [use where appropriate]

- 19.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.
- 19.2 The Council is to inspect the Work the subject of the notice referred to in clause 19.1 within 14 days of the date specified in the notice for completion of the Work.
- 19.3 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 19.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 19.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 19.5 Before the Council gives the Developer a notice referred to in clause 19.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council that notice must include an itemised list of the works required to complete, rectify or repair the Work.
- 19.6 The Developer, at its own cost, is to promptly comply with a reasonable direction referred to in clause 19.5.

20 Rectification of defects

- 20.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 20.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 20.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 20.1.
- 20.4 A Rectification Notice issued by Council in accordance with Clause 20.1 may only require Work undertaken by the Developer to be completed to the standard specified and approved by Council in accordance with Clause 11 of this Deed.

21 Works-As-Executed-Plan and Valuation

- 21.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council complete copies of works-as-executed-plans in respect of the Work in a format acceptable to Council.
- 21.2 The Developer must procure from the copyright owner of the plans referred to in clause 21.1, a non-exclusive licence in favour of Council to use the copyright in the plans for Council's purposes.

22 Removal of Equipment

- 22.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- (a) remove any Equipment from the Council owned and controlled land and make good any damage or disturbance to the land as a result of that removal, and
 - (b) leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 - Dispute Resolution

23 Dispute resolution - expert determination

- 23.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- (a) the Parties to the Dispute agree that it can be so determined; or
 - (b) the Chief Executive Officer or head of the professional body that represents persons who have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 23.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

- 23.3 If a notice is given under clause 23.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 23.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 23.5 The expert determination is binding on the Parties except in the case of fraud, misfeasance by the expert, or error of law.
- 23.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 23.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

24 Dispute Resolution - Mediation

- 24.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 23 applies.
- 24.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 24.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 24.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

25 Security for performance of obligations

- 25.1 The Developer is to provide Security to the Council in the amount of [insert amount] in relation to the performance of its obligations under this Deed.
- 25.2 The Developer is to provide the Security to the Council before it commences any part of the Development. [Security may be staged for various items of work where appropriate].

- 25.3 The Council, in its absolute discretion and despite clause 14, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 25.4 The Council may call-up and apply the Security in accordance with clause 27 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 25.5 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligations in respect of which the Security relates.
- 25.6 The Developer may at any time provide the Council with a replacement Security. On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 25.7 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.
- 25.8 At the expiry of each 12 month period during which the Security is provided to the Council, the Developer is to ensure that the Security provided is adjusted by the increase or decrease in CPI index over the last 12 month period.
- 25.9 Notwithstanding any other provision of this Deed, the Developer may provide a separate Security for each Item of Work, provided that the sum of all Securities provided and held by Council complies with this clause 25.

26 Acquisition of land required to be dedicated [use where appropriate]

- 26.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act, and in respect of Item 2 in Part A of Schedule 1 consents to the Council acquiring the land for the purposes of re-sale.
- 26.2 The Council is to only acquire land pursuant to clause 26.1 if it is reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 26.3 Clause 26.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 26.4 If, as a result of the acquisition referred to in clause 26.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 25.
- 26.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

- 26.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 26, including without limitation:
- (a) signing any documents or forms;
 - (b) giving land owner's consent for lodgement of any Development Application;
 - (c) producing certificates of title to the Registrar-General under the *Real Property Act 1900*; and
 - (d) paying the Council's reasonable costs arising under this clause 26.

27 Breach of obligations

- 27.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- (a) specifying the nature and extent of the breach;
 - (b) requiring the Developer to:
 - (i) rectify the breach if it reasonably considers it is capable of rectification; or
 - (ii) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if the breach is not reasonably capable of rectification;
 - (c) specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 27.2 If the Developer fails to fully comply with a notice referred to in clause 27.1 within the time specified in the notice, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 27.3 If the Developer fails to comply with a notice given under clause 27.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 27.4 Any costs reasonably incurred by the Council in remedying a breach in accordance with clause 27.2 or clause 27.3 may be recovered by the Council by either or a combination of the following means:
- (a) by calling-up and applying the Security provided by the Developer under this Deed; or
 - (b) as a debt due in a court of competent jurisdiction.
- 27.5 For the purpose of clause 27.4, the Council's costs of remedying a breach the subject of a notice given under clause 27.1 include, but are not limited to:
- (a) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;

- (b) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
- (c) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

27.6 Nothing in this clause 27 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

28 Enforcement in a court of competent jurisdiction

28.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

28.2 For the avoidance of doubt, nothing in this Deed prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; or
- (b) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 - Registration and Restriction on Dealings

29 Registration of this Agreement

29.1 The Parties agree to register this Deed on the title of the Land for the purposes of s93H(1) of the Act.

29.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:

- (a) an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer; and
- (b) the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.

29.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

29.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

30 Restriction on dealings

30.1 The Developer is not to:

- (a) sell or transfer the Land; or

- (b) assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

- (c) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council; and
- (d) the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- (e) the Developer is not in material breach of this Deed; and
- (f) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

30.2 Clause 30.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale or transfer.

Part 6 - Indemnities & Insurance

31 Risk

31.1 The Developer performs this Deed at its own risk and its own cost.

32 Release

32.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

33 Indemnity

33.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

34 Insurance

34.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:

- (a) contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;

- (b) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (c) workers compensation insurance as required by law; and
 - (d) any other insurance required by law.
- 34.2 If the Developer fails to comply with clause 34.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- (a) by calling upon the Security provided by the Developer to the Council under this Deed; or
 - (b) recovering the amount as a debt due in a court of competent jurisdiction.
- 34.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 34.1.

Part 7 - Other Provisions

35 Notices

- 35.1 Any notice, consent, information, application or request that is to 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 in the Key Details;
 - (b) faxed to that Party at its fax number set out in the Key Details; or
 - (c) emailed to that Party at its email address set out in the Key Details.
- 35.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, Information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 35.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- (a) delivered, when it is left at the relevant address,
 - (b) sent by post, 2 business days after it is posted.
 - (c) 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, or
 - (d) sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

- 35.4 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.

36 Approvals and Consent

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

37 Costs

- 37.1 The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing, registering and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 37.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

38 Entire Deed

- 38.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 38.2 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 Deed was executed, except as permitted by law.

39 Further Acts

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

40 Governing Law and Jurisdiction

- 40.1 This Deed is governed by the law of New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

41 Joint and Individual Liability and Benefits

- 41.1 Except as otherwise set out in this Deed;
- (a) any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually; and
 - (b) any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

42 No Fetter

- 42.1 Nothing in this Deed shall 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.

43 Illegality

- 43.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

44 Severability

- 44.1 If a clause or part of a clause of this Deed 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.
- 44.2 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 Deed, but the rest of this Deed is not affected.

45 Amendment

- 45.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

46 Waiver

- 46.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 46.2 A waiver by a Party is only effective if it is in writing.
- 46.3 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.

47 GST

- 47.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 47.2 Subject to clause 47.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 47.3 Clause 47.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 47.4 No additional amount shall be payable by the Council under clause 47.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 47.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:
- (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies; and
 - (b) that any amounts payable by the Parties in accordance with clause 47.2 (as limited by clause 47.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 47.6 No payment of any amount pursuant to this clause 47, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 47.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 47.8 This clause continues to apply after expiration or termination of this Deed.

48 Explanatory Note

- 48.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation. Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

Development Contributions

Item/Contribution	Public Purpose	Manner & Extent	Timing
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Schedule 2

Description of Land and Works

Schedule 3

Dedication Plan

Schedule 4

Location Plan

Schedule 5

Specifications

EXECUTION

Executed as a deed on

2016

Signed sealed and delivered for and on behalf
of **Georges River Council ABN 57 789 014 855**
by its General Manager pursuant to
Section 683 of the *Local Government Act 1993*

.....
General Manager

.....
Witness

Appendix C - Template Explanatory Note

Explanatory Note

Environmental Planning and Assessment Regulation 2000 (Clause 25E)

[Note: to be completed upon finalisation of Planning Agreement]

Draft Planning Agreement

Under s 93F of the *Environmental Planning and Assessment Act 1979*

Parties

Georges River Council

(Developer)

Description of Subject Land

Description of Proposed Change to Environmental Planning Instrument/Development Application

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

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft 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

- (a) Council's Charter
- (b) How the Draft Planning Agreement Promotes the Elements of the Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

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

Other Matters

Signed and Dated by All Parties

Appendix D - Template condition of development consent

(Where planning agreement accompanied a development application)

##. Pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, the planning agreement that relates to the development application the subject of this consent must be entered into before [*Insert Requirement*].

(Where planning agreement accompanied an application to change an environmental planning instrument)

##. Pursuant to section 80A(1) of the *Environmental Planning and Assessment Act 1979*, the applicant must comply with the terms of the planning agreement that accompanied the application made by [*Insert Name of Developer*] to [*Insert Name of Planning Authority*] dated [*Insert Date*] relating to [*Specify Name of Environmental Planning Instrument*] for the purpose of the making of the development application the subject of this consent.

Appendix E - Table of Residual Land Values

Residual Land Value (RLV) per square metres of floor space by precinct within Hurstville and Kogarah (as defined by the maps below)

Use	Hurstville Central	Hurstville West	Hurstville East	Hurstville South	Kogarah Central	Kogarah West
Retail	\$5,000	\$2,000	\$2,000	\$2,000	\$3,500	\$2,500
Commercial (office)	\$1,750	\$1,500	\$1,500	\$1,750	\$2,000	\$1,850
Residential	\$2,750	\$2,500	\$2,500	\$2,750	\$3,000	\$2,750

Notes:

- i. The nominated per square metre rates in the Residual Land Value table above are averages for the relevant precincts.
- ii. The Residual Land Values will be updated and re-published on an as needs basis to account for changes in property markets that will influence the residual land values over time.
- iii. For all areas outside of the six precincts in the Residual Land Value table (as shown in the maps below), the developer will be required to provide the Council with sufficient details, costs and valuations to determine the applicable residual land values under the existing and proposed planning controls.

Figure 1: Precincts – Hurstville Central, Hurstville West, Hurstville East and Hurstville South

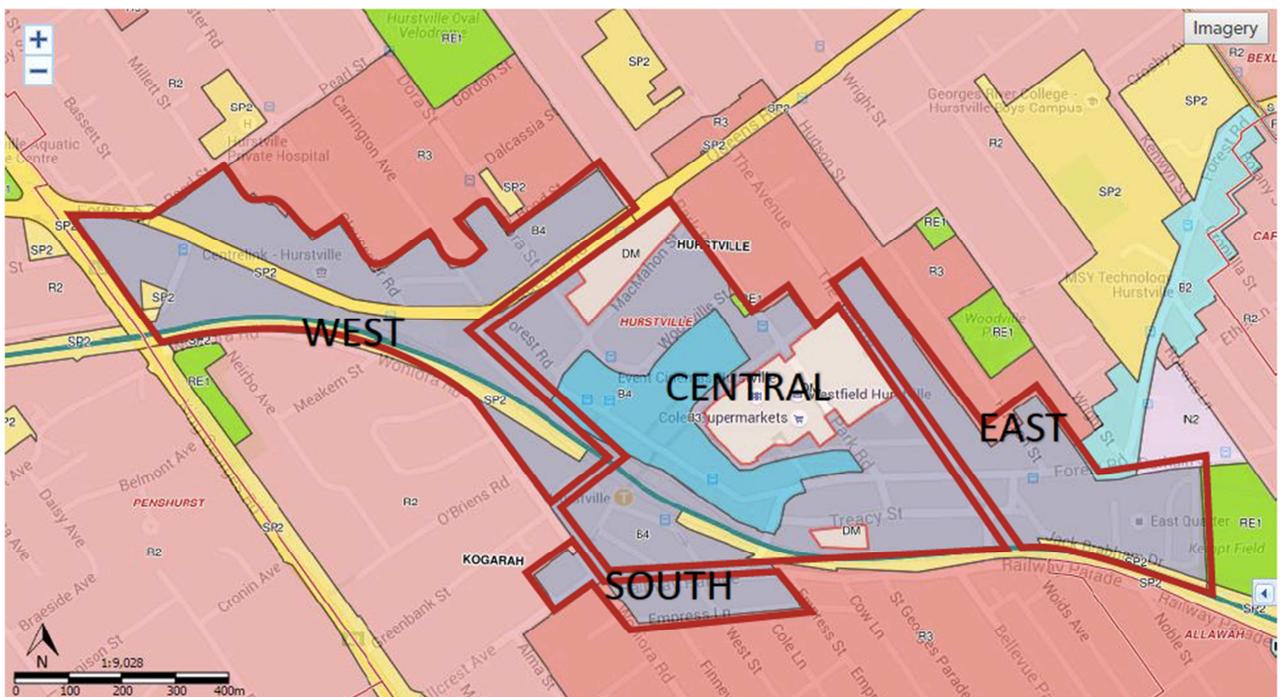
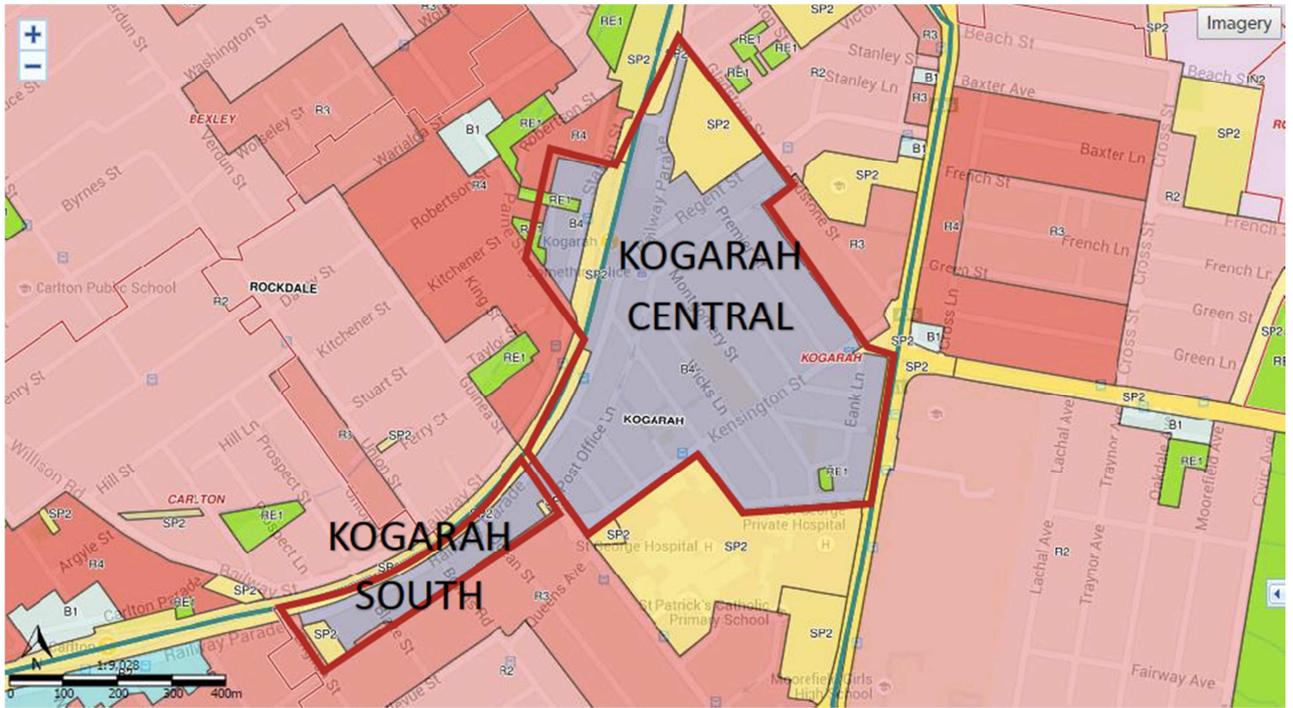


Figure 2: Precincts – Kogarah Central and Kogarah SouthTown Centre



Appendix F - Table of suggested infrastructure works that constitute a material public benefit within Council's LGA

The following is a list of suggested infrastructure for works that constitute a material public benefit within the Council's LGA.

Infrastructure

- (a) roads – design and construction;
- (b) accessibility improvements – accessible parking, kerb ramps, and modifications to public buildings or areas;
- (c) open space – parks, public places, embellishment;
- (d) drainage and storm water controls – drainage amplification, integrated water treatment facilities, large scale detention basins, overland flow paths and storm water channel improvements and sediment control measures;
- (e) traffic management measures:
 - (i) bus and traffic turning lanes;
 - (ii) public and “green” transport outcomes;
- (f) pedestrian and cycleway connections, through site links and footpaths;
- (g) communications and information technology such as WIFI in a public space;
- (h) bridges (vehicular and pedestrian);
- (i) undergrounding of overhead powerlines; and
- (j) public transport - works that facilitate and enhance existing public transport facilities such as bus layovers and turning lanes, bus stops.

Public Community Facilities

- (a) community services – e.g. meeting rooms, halls, libraries;
- (b) child care and family health care centres;
- (c) public toilets;
- (d) youth spaces;
- (e) public leisure facilities;
- (f) performance spaces;
- (g) civic spaces;
- (h) public car parking areas;

- (i) bus shelters;
- (j) family care facilities;
- (k) sport, recreation and activity centres;
- (l) business, research and creative industries incubator space; and
- (m) affordable housing.

Public Open Space and Public domain improvements

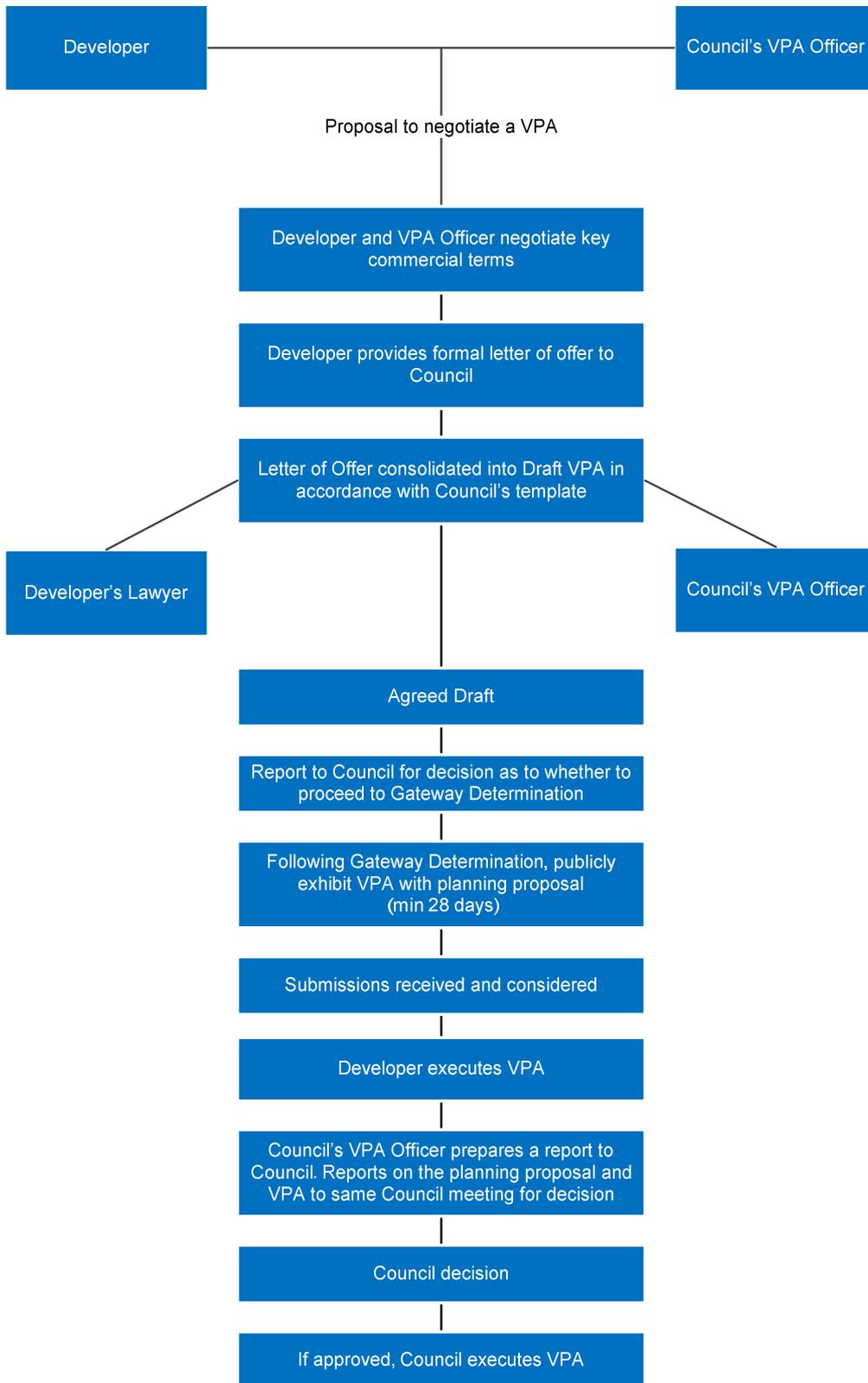
- (a) embellishment works to new or existing open space, including new play equipment, lighting, sports facilities, furniture and landscaping;
- (b) paving – paths, streets and open space areas;
- (c) plantings – streets and open space areas;
- (d) furniture – seats, bins;
- (e) banners;
- (f) public art in streets, open space and other public domain space;
- (g) kerbs and gutters;
- (h) treatment and/or features in public places;
- (i) facilities such as kiosk in parks and open spaces;
- (j) turf;
- (k) environmental management improvements such as water and energy minimising devices;
- (l) water bubblers, lockers and other amenities; and
- (m) signage including suburb identification, way finding, parking, interpretation and information signs for pedestrians, cyclists and vehicular users.

Other contributions

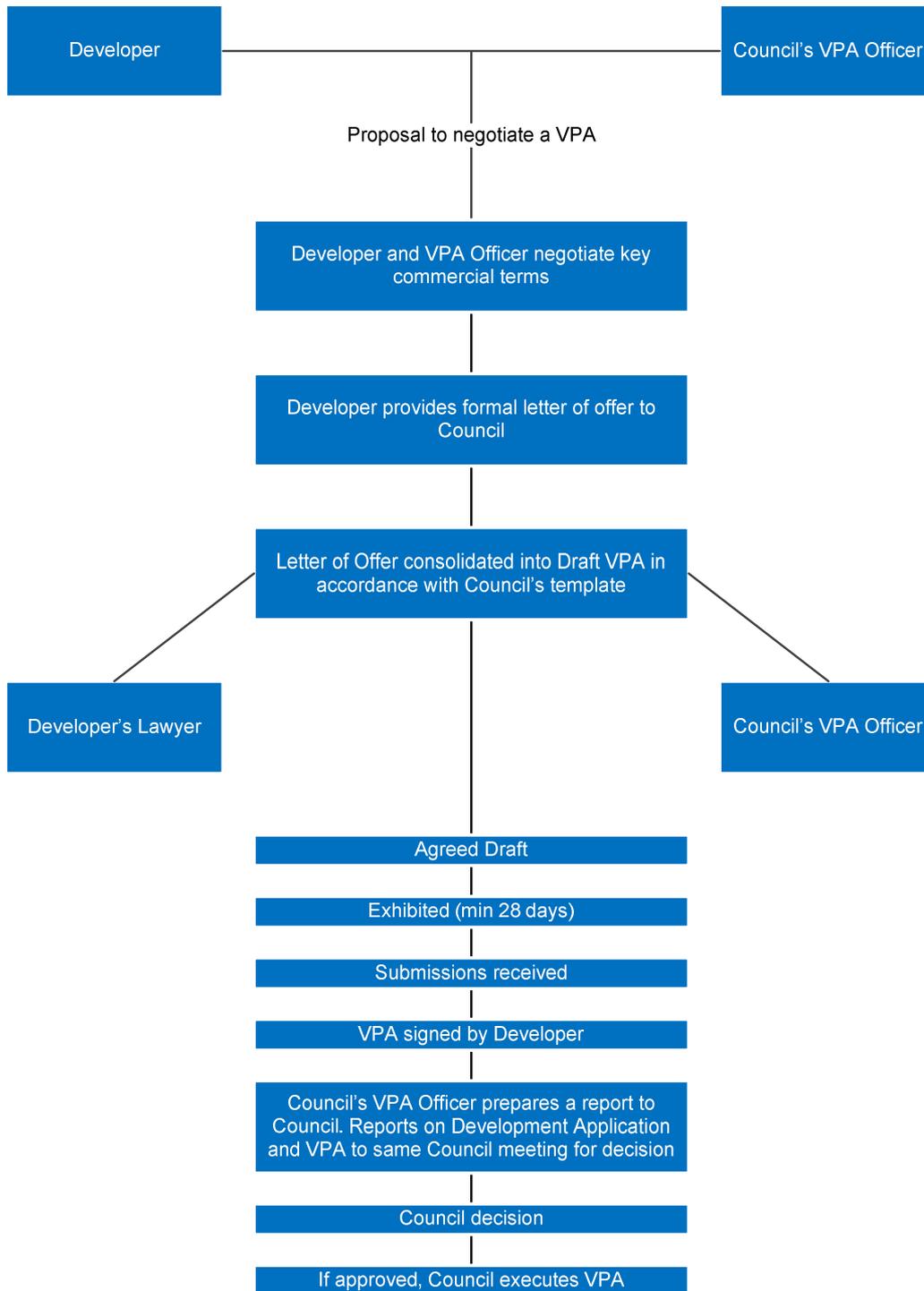
- (a) cash contributions;
- (b) land such as dedications for parks, facilities, pedestrian connectivity and new roads;
- (c) contributions for the development of community facilities plans and cultural facilities plans;
- (d) aboriginal site protection;

- (e) other benefits in line with Council plans and strategies - including plans of management, flood plan management plans, traffic and transport plans, masterplans, development controls plans and local environmental plan studies; and
- (f) other public benefits that provide a positive planning outcome for the community of Georges River and meet the objectives of the Act.

Appendix G - VPA process where VPA relates to a planning proposal



Appendix H - VPA process where VPA relates to a development proposal



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