



**LITHGOW CITY COUNCIL**

Policy 7.12

**PLANNING AGREEMENTS**

## 7.11 PLANNING AGREEMENTS

### OBJECTIVES:

This policy provides procedures concerning the use of planning agreements in the Lithgow Local Government Area.

### DEFINITIONS:

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

Development 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.

Planning benefit means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of a particular development on surrounding land or the wider community.

Public facilities means public infrastructure, facilities, amenities and services.

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

Public benefit is the benefit enjoyed by the public as a consequence of a development contribution.

### POLICY:

#### ***CIRCUMSTANCES IN WHICH COUNCIL WOULD ORDINARILY CONSIDER ENTERING INTO A PLANNING AGREEMENT***

Planning agreements (PAs) have the potential to be used in a wide variety of planning circumstances to achieve many different planning outcomes. Their use will be dictated by the circumstances of individual cases within this policy framework. Council will consider entering into a planning agreement in connection with a proposed change to an environmental planning instrument or a proposed/submitted development application. Some examples of circumstances where PAs may be appropriate include:

- Compensation for loss or damage caused by development - PAs can provide for development contributions that compensate for the loss of or damage to a public amenity, service, resource or asset that will or is likely to result from the carrying out of the development the subject of the agreement.
- Meeting demand created by development - PAs can provide for development contributions that meet the demand for new public infrastructure, amenities and services created by development the subject of the agreement.
- Prescribing inclusions in development - PAs can be used to secure the implementation of particular planning policies by requiring development to incorporate particular elements that confer a public benefit such as open space, recreational facilities, retention of urban bushland etc.
- Providing planning benefits to the wider community - Through a PA, development may provide an overall net benefit to the wider community rather than purely addressing the direct impacts of the development. Planning benefits may take the form of additional or better quality public facilities than is required to meet the demand created by the development.
- Recurrent funding - PAs may provide for public benefits that take the form of development contributions towards recurrent costs of infrastructure, facilities and services.

While planning agreements may be used in a wide range of circumstances it is important to identify situations that may prevent Council from considering entering into a planning agreement. Such circumstances are included in the following:

- Where the suspicion may arise that a change to an environmental planning instrument or a development consent can be bought by the highest bidder via a planning agreement.
- When the planning agreement incorporates or suggests an obligation for Council to grant consent to the application the subject of the PA.
- Where a breach of the Environmental Planning and Assessment Act 1979 (EP&A Act) or other Act may result from the provisions of a planning agreement.
- Council will avoid, wherever possible, entering a PA where Council has a direct stake in the development.

## ***MATTERS ORDINARILY COVERED BY A PLANNING AGREEMENT***

In accordance with section 93F of the EP&A Act, Council will require the following matters to be covered in a planning agreement:

- A description of the land to which the agreement applies,
- A description of the change to the environmental planning instrument, or the development, to which the agreement applies;
- The nature and extent of the development contribution(s) to be made by the developer under the agreement, and when and how the contributions are to be made;
- Whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development;
- If the agreement does not exclude the application of section 94 to the development, whether benefits under the agreement may or may not be considered in determining a contribution under section 94;
- A dispute resolution mechanism; and
- The enforcement of the agreement by a suitable means, such as the provision of a bond or bank guarantee, in the event of a breach by the developer. (Consideration should be given to the type of security which is appropriate to the circumstances of the particular development).

In addition to these mandatory matters, Council will generally require consideration to be taken of the following issues in a planning agreement:

- Whether the agreement is to be registered as provided for in section 93H of the EP&A Act,
- Whether, and in what circumstances, the agreement can or will be reviewed and how the process and implementation of the review is to occur;
- Provisions relating to Notices, Assignments and Dealings, and Costs; and
- Standard operative provisions.

The aforementioned provisions do not limit the inclusion of further matters that relate to the specific circumstances of the development, land, adjoining or related areas and/or the planning agreement.

An Explanatory Note shall be prepared in accordance with clause 25E of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) which includes detail regarding the proposed planning agreement. The Explanatory Note accompanies the planning agreement and is exhibited and registered with the planning agreement.

Some matters are precluded from a planning agreement as follows:

- In accordance with section 93F(9), any provision imposing an obligation on Council to grant development consent or to exercise a function under the EP&A Act in relation to a change to an environmental planning instrument,
- In accordance with section 93F(10), any provision which authorises anything to be done in breach of the EP&A Act, any other Act, an environmental planning instrument or a development consent applying to the land to which the agreement applies.

#### ***FORM OF DEVELOPER CONTRIBUTIONS ORDINARILY SOUGHT UNDER A PLANNING AGREEMENT***

Development contributions to be used for, or applied towards a public purpose under a planning agreement can be:

- Monetary contributions,
- The dedication of land free of cost,
- Any other material public benefit, or
- Any combination of the above.

Public purpose is defined in section 93F(2) to include the provision of, or the recoupment of the cost of providing public amenities and public services, affordable housing, transport or other infrastructure. It also includes the funding of recurrent expenditure relating to such things as the monitoring of planning impacts of development and the conservation or enhancement of the natural environment.

Section 93F(4) provides that a provision of a planning agreement is not invalid by reason only that there is no connection between the development and the object of the expenditure of any money required to be paid under the provision.

## ***KINDS OF PUBLIC BENEFITS ORDINARILY SOUGHT AND, IN RELATION TO EACH KIND OF BENEFIT, WHETHER IT INVOLVES A PLANNING BENEFIT***

The objective of planning agreements is not limited to internalising the potential costs of development on the public domain. Rather they facilitate the provision of planning benefits by developers. A planning benefit is a net public benefit to the wider community additional to that needed to meet the demand created by the subject development. A planning agreement that provides for a planning benefit involves an agreement by the developer to contribute part of the development profit for a public purpose.

The kinds of public benefits ordinarily sought are those often provided for by the developer contributions system including but not limited to open space provisions, recreational and sports facilities, community facilities, car parking, road and traffic facilities, drainage structures, environmental protection, streetscape and other public domain improvements. Each of these can include a planning benefit.

Planning agreements must be governed by the fundamental principle that planning decisions may not be bought or sold. This means that contributions made by developers towards public purposes that are wholly unrelated to their development should be discouraged, and that unacceptable development should not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.

In accordance with section 93F(A) development contributions provided for in a planning agreement do not have to bear a connection with the development as required by section 94. This is due to the voluntary nature of planning agreements compared to the compulsory nature of section 94. Planning agreements may be used to overcome past deficiencies in infrastructure provision that would otherwise prevent development from occurring. This may frequently involve conferring a planning benefit under the agreement.

## ***METHOD FOR DETERMINING THE VALUE OF PUBLIC BENEFITS AND WHETHER THAT METHOD INVOLVES STANDARD CHARGING***

Public benefits are negotiated on a case by case basis, however, standardised development contributions sought under planning agreements can streamline negotiations and provide predictability and certainty for developers. These can not always be applied due to the unique circumstances of each case. The minimum value of public benefit, not including planning benefit, to be provided by the developer will be based on the calculated value of developer contributions that would be required under the applicable contributions plans.

The developer being cognisant of the applicable contribution plans can calculate this value and decide which elements might be negotiated in a planning agreement process. This provision aims to ensure that the community is not disadvantaged by the use of a planning agreement wholly or partly in place of section 94 or section 94A contributions.

Where land is to be dedicated for public purposes the value of such land is to be provided by the Valuer-Generals Office. The purpose being to ensure that short term market fluctuations do not significantly disadvantage either party entering the planning agreement.

Where construction work is to be undertaken to provide a public benefit a formal itemised quote is required specific to the proposed construction. This quote is then to be compared to Council's internal valuation of the work. An independent third party may also prepare comparable quote, however, both parties must agree to the suitability of the third party prior to the quote being provided.

In summary, a flexible process is needed to account for the particular circumstances of the development and this process in itself degrades the application of standard charges. However, the relation to the applicable contributions plans provides a basis to establish the value of public benefits. The value of such public benefits under a planning agreement will never be less than the required section 94 or section 94A contributions.

The developer is therefore attracted to the planning agreement process not by cost reduction but by cost efficiency. That is, it may suit the developer to provide or contribute to certain infrastructure and amenities at the time of construction to improve the functioning and attractiveness of the development rather than to follow the developer contributions process provided for in the relevant contributions plans.

### **Pooling and progressive application of contributions to various public benefits**

Council is required to disclose that monetary contributions paid under different planning agreements may be pooled and progressively applied towards the provision of public benefits that relate to the various agreements. Planning agreements should specifically provide for this mechanism. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

Pooling may not be practicable or necessarily appropriate where few planning agreements are enacted, particularly if these are not geographically proximate.

## ***WHEN, HOW AND WHERE PUBLIC BENEFITS WILL BE PROVIDED***

Sections 93E(1) and (4) require that Council is to hold any monetary contributions paid in accordance with a planning agreement, together with any additional amount earned from its investment, for the purpose for which the payment was required and apply it towards that purpose within a reasonable time. Section 93E(3) contains a similar requirement in respect of land dedicated in accordance with a planning agreement.

The accountability requirements for planning agreements are similar to those for section 94 contributions. It is necessary for Council to maintain a register of planning agreements both in terms of their stipulations and provisions as well as a register of funds collected and land dedicated. While five years is generally considered as 'reasonable time', the concept can vary substantially depending on the nature of the public benefits being conferred.

## ***PROCEDURES FOR NEGOTIATING AND ENTERING INTO PLANNING AGREEMENTS***

Each planning agreement negotiated and entered into will be unique in terms of its content, process and focus. However, it is possible to provide general procedures to advise and guide the process. This sequence is summarised as follows.

- Pre-Development Negotiation - offer of PA, negotiation and drafting.
- Submission of Development Application (DA) - with draft planning agreement.
- DA process - consultation (public authorities & developer), amendments to PA.
- Public notification - exhibition for 28 days minimum.
- Determination of DA
- Finalisation of Planning Agreement
- Notification – to the Minister for Planning and public as specified.
- Registrations - with land and in Council register.
- Public Access and reporting – a public register is to be maintained and Council is to report on PAs entered into in the past year in its Annual Report.

The process of negotiating and entering into a planning agreement is complex and involved.

Examples of possible contributions, dedications or material public benefits that may be considered appropriate for a planning agreement include:

- A monetary contribution on an 'equivalent tenement' toward the provision of community facilities in the Lithgow Local Government Area.
- Embellishment of existing open space areas.
- Dedication and embellishment of active and passive open space.

The following provides an example of possible inclusions in a planning agreement:

- The developer shall pay to Council an amount of (to be negotiated) plus GST if applicable per allotment created for residential purposes toward the provision of community facilities in the Lithgow Local Government Area.
- Full embellishment of the passive open space generally as outlined in (the developers offer) including weed removal, a shared access pathway/cycleway and seating.
- Provide as part of the lands the subject of the development application at least (area to be determined – for example in accordance with a DCP requirement) of land for active open space purposes and embellish the lands prior to the issue of a subdivision certificate with at least the following:
  - A mixture of (to Council's satisfaction) new playground equipment, green space, skateboard and/or bicycle "ramp" facilities, basketball/netball practice facilities (eg part of a court area and hoop)
  - Seating and tables
  - The area is to be suitably landscaped and turfed with low maintenance lawn and fitted with an irrigation system
  - Alternatively, the developer may choose to pay Council an amount of (to be negotiated) plus GST if applicable per allotment created for residential purposes in respect of active open space required as a result of the development.

## **Planning Agreement Template**

A planning agreement, explanatory note template and model development consent condition is provided in Appendix A of this Policy.

### ***POLICIES REGARDING RELATED MATTERS***

#### **Review and Modification**

Council is required to develop a standardised practice to monitor the implementation of planning agreements in a systematic and transparent way. Monitoring systems enable information about the implementation of planning agreements to be made readily available to public agencies, developers and the community. Planning agreements should contain a mechanism for their periodic review that should involve the participation of all parties.

Planning agreements should set out the circumstances in which the parties agree to modify the developer's obligations under the agreement. Such a modification should be effected by an amendment to the agreement. The circumstances that may require the modification of a planning agreement include the following:

- Material changes to the planning controls applying to the land to which the agreement applies;
- A material modification to the development consent to which an agreement relates;
- The lapsing of the development consent to which an agreement relates;
- The revocation or modification of a development consent to which an agreement relates by the Minister; and
- Other material changes in the overall planning circumstances of an area affecting the operation of the planning agreement.

#### **Discharging of Developers Obligations**

Planning agreements should not impose obligations on developers indefinitely. Planning agreements should set out the circumstances in which the parties agree to discharge the developer's obligations under the agreement. Fulfilment of all the developer's obligations generally brings about the conclusion of the planning agreement.

The circumstances that may require the discharge of the developer's obligations relating to a planning agreement include the following:

- Material changes to the planning controls applying to the land to which the agreement applies;
- A material modification to the development consent to which an agreement relates;
- The lapsing of the development consent to which an agreement relates;
- The revocation or modification of a development consent to which an agreement relates by the Minister;
- Other material changes in the overall planning circumstances of an area affecting the operation of the planning agreement.

### **Refunds**

Planning agreements generally provide that refunds of monetary development contributions made under the agreement are available if public benefits are not provided in accordance with the agreement. This provision protects the interests of developers and obligates Council to ensure accurate accounting and timely provision of public benefits.

### **Dispute Resolution**

Council provides for a comprehensive framework aimed at minimising disputation and constructively resolving disputes that do arise. This framework includes provisions for negotiation principles, safeguards and dispute resolution including third party involvement.

Negotiation systems relating to planning agreements should be based on principles of co-operation, full disclosure, early warning, agreed working practices and timetables. In addition, safeguards should apply to the use of planning agreements as follows:

- Provide for a generally applicable test for determining the acceptability of a planning agreement, which embraces amongst other things concepts of reasonableness;
- Contain specific measures to protect the public interest and prevent misuse of planning agreements;
- Be open with published rules and accessible procedures;
- Provide for effective formalised public participation;
- Extend fairness to all parties affected by a planning agreement; and

- Guarantee regulatory independence of Council.

The generally applicable acceptability test referred to above should require that planning agreements:

- Are directed towards proper or legitimate planning purposes, ordinarily ascertainable from the planning controls and other adopted planning policies applying to development;
- Provide for public benefits that bear a relationship to development that is not *de minimis* (that is not wholly unrelated to the development);
- Produce outcomes that meet the general values and expectations of the public and protect the overall public interest;
- Provide for reasonable means of achieving the relevant purposes and outcomes and securing the benefits; and
- Protect the community against planning harm.

Independent third parties can potentially be used in a variety of situations involving planning agreements. Council is encouraged to make appropriate use of them in various situations including:

- Where an independent assessment of a proposed change to an environmental planning instrument or development application is necessary or desirable;
- Where factual information requires validation in the course of negotiations;
- Where sensitive financial or other confidential information must be verified or established in the course of the negotiations;
- Where facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved; and
- Where dispute resolution is required under a planning agreement.

It is prudent for a schedule of agreed independent third parties to be identified early in the negotiation process relevant to the various areas and roles described above. These will be recorded in the mandatory dispute resolution section of the planning agreement. This section will also record the sequence of actions in the dispute resolution process and the key individuals and institutions associated with each stage.

## **Enforcement Mechanisms**

Enforcement mechanisms are stipulated in each planning agreement on a mandatory basis and specific for the circumstances of the development. Enforcement mechanisms typically include the provision of a bond or bank guarantee by the developer. The refund provisions exist to protect developers against the misuse of monetary contributions by Council.

### **Payment of costs incurred in the preparation, negotiation, execution, monitoring and administration of agreements**

There is no comprehensive policy that can be applied relating to cost recovery and cost sharing due to the unique circumstances associated with each planning agreement.

However, cost recovery should be based on reasonable charges and generally should be equally shared between Council and the developer. The reasonableness of charges may be established by the use of published Council charges, industry standard charges, independent third party quotations or other means. Cost deliberations form part of the negotiation process and should be recorded in the planning agreement.

## **GST Considerations**

A planning agreement potentially involves taxable supplies from Council and/or developer. Consequently, both parties may have a potential GST liability.

Parties to planning agreements should obtain legal/financial advice in every case on whether a potential GST liability attaches to a particular agreement. Preliminary negotiations should establish if GST will form a basis of cost negotiations.

## **Appendix A – Planning Agreement & Explanatory Note Template and Model Development Consent Condition**

This template was obtained from the DIPNR Development Contributions Practice Notes – July 2005 on the Department of Planning website ([www.planning.gov.nsw.au](http://www.planning.gov.nsw.au)) on

27 September 2005

The template includes:

1. Planning Agreement
2. Explanatory Note
3. Model development consent conditions

**Prior to use the Department of Planning website should be accessed to obtain the current practice notes and accompanying template. These practice notes are designed to be regularly updated and failure to use the current practice may lead to significant legal and financial repercussions for Council.**

## **PLANNING AGREEMENT**

### **Parties**

LITHGOW CITY COUNCIL of 180 MORT STREET, LITHGOW, New South Wales  
(Council)

and

## of ##, New South Wales (Developer).

### **Background**

(For Development Applications)

- A. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

(For Changes to Environmental Planning Instruments)

- A. On, ##, the Developer made a submission to the Council relating to the Instrument Change for the purpose of making a subsequent Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change submission was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities in relation to the Development Consent.
- C. The Instrument Change was published in NSW Government Gazette No. ## on ## and took effect on ##.
- D. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

## 1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

## 2 Application of this Agreement

[*Drafting Note 1: Specify the land to which the Agreement applies and the development to which it applies*]

## 3 Operation of this Agreement

[*Drafting Note 2: Specify when the Agreement takes effect and when the Parties must execute the Agreement*]

## 4 Definitions and interpretation

### 4.1 In this Agreement the following definitions apply:

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

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

**Development** means ##

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any

other Act or regulation relating to the imposition or administration of the GST.

**Instrument Change** means ## Local Environmental Plan ##.

**Land** means Lot ## DP ##, known as ##.

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

**Public Facilities** means ##.

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

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

## 5 Development Contributions to be made under this Agreement

[*Drafting Note 3*: Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made]

6 Application of the Development Contributions

[*Drafting Note 4*: Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied]

7 Application of s94 and s94A of the Act to the Development

[*Drafting Note 5*: Specify whether and to what extent s94 and s94A apply to development the subject of this Agreement]

8 Registration of this Agreement

[*Drafting Note 6*: Specify whether the Agreement is to be registered as provided for in s93H of the Act]

9 Review of this Agreement

[*Drafting Note 7*: Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur ].

10 Dispute Resolution

[*Drafting Note 8*: Specify an appropriate dispute resolution process]

11 Enforcement

[*Drafting Note 9*: Specify the means of enforcing the Agreement]

12 Notices

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

(a) Delivered or posted to that Party at its address set out below.



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.

### 13 Approvals and consent

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

### 14 Assignment and Dealings

[*Drafting Note 10*: Specify any restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restrictions apply]

### 15 Costs

[*Drafting Note 11*: Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties]

### 16 Entire agreement

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

17 Further acts

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

18 Governing law and jurisdiction

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

19 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20 No fetter

Nothing in this Agreement 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.

21 Representations and warranties

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

## 22 Severability

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

## 23 Modification

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

## 24 Waiver

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

## 25 GST

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

## **Execution**

Dated: ##

Executed as an Agreement: ##

## Environmental Planning and Assessment Regulation 2000

(Clause 25E)

### Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

#### 1. Parties

**LITHGOW CITY COUNCIL** (Planning Authority)

## (Developer)

#### 2. Description of Subject Land

#### 3. Description of the Development Application **or** Change to Environmental Planning Instrument and Subsequent Development Application

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

#### 5. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the 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

For Planning Authorities:

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

### Template Condition of 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*].

<b>Maintained by Department:</b>	Policy and Planning	<b>Approved by:</b>	Council	<b>Effective Date:</b>	4/12/2006
<b>Reference:</b>	Dataworks: Policy Register	<b>Council Policy No:</b>	7.12	<b>Last Date of Review</b>	15/10/2007
<b>Min No:</b>	06-414	<b>Version No:</b>	1	<b>Review Date:</b>	October 2008
<b>Attachments:</b>					