ATTACHMENTS

ORDINARY MEETING

Thursday 17 September 2026
10:00 AM
Council Chambers

Contents

Upper Lachlan Shire Council

Date:17 September 2026	Policy Title: Developer Agreements Policy
This cover sheet provides a summary of the proposed Developer Agreements Policy. Council have separately adopted a Development contributions plan initially adopted on 27 March 2012 with a revision on 19 November 2015.	
Sponsor: Director Environment and Planning	Action required: Approval by Council
Reason for review/update: Council regularly review and update policies to ensure that they are current, fit-for-purpose and relevant to Council's operations. The attached policy has been reviewed and updated in line with this practice and the sponsor is now seeking your approval to implement this policy.	
Summary : Council engaged gln Planning Consultants to assist with preparation of the Development Agreement Policy. There is currently no standalone Council Policy on how Planning Agreements are managed by Staff or Elected Officials. The Policy outlines the assessment and negotiation of planning agreements undertaken and the role of staff and elected officials. **Proposed Position** 1. A formal governance framework is established within the Policy. 2. The Policy defines when WIKAs and VPAs are appropriate. 3. The Policy establishes approval pathways and responsibilities. 4. The Policy introduces a renewable energy VPA framework and community benefit contribution expectations. 5. The policy establishes securities and risk management requirements.	
Consultation(s): N/A	
Internally cleared by	

Position: Director Planning and Environment	Position: Manager Planning and Regulatory

POLICY:-	
Policy Title:	Developer Agreements Policy
File reference:	
Date Policy was adopted by Council initially:	17 September 2026
Resolution Number:	XXX/26
Other Review Dates:	
Resolution Number:	XXX/26
Current Policy adopted by Council:	17 September 2026
Resolution Number:	XXX/26
Next Policy Review Date:	2029

PROCEDURES/GUIDELINES:-	
Date procedure/guideline was developed:	
Procedure/guideline reference number:	

RESPONSIBILITY:-	
Draft Policy Developed by:	Manager Planning and Regulatory
	NA

Committee/s (if any) consulted in the development of this policy:	
Responsibility for implementation:	Manager Planning and Regulatory
Responsibility for review of Policy:	Manager Planning and Regulatory

Upper Lachlan Shire - Developer Agreements Policy

Prepared by

gln.
planning
consulting
strategy

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Summary of Policy

This Developer Agreements Policy (the **Policy**) provides a clear and consistent framework for how Upper Lachlan Shire Council assesses, negotiates and executes Developer Agreements, including Works In Kind Agreements (**WIKAs**) and Voluntary Planning Agreements (**VPAs**).

The Policy sets out when each type of Agreement is appropriate, the information required to support an offer, and the process from initial submission through to execution. It also establishes Council's acceptability test to ensure that agreements deliver legitimate planning outcomes, align with strategic objectives, and protect the public interest and governance arrangements, including the roles of Council staff and elected representatives, to ensure transparency, accountability and probity throughout the process.

Developer Agreements are used to facilitate the delivery of local infrastructure and public benefits. WIKAs are generally used where developers deliver infrastructure identified in a contributions plan, with the value of works offset against required contributions. VPAs are used where development delivers infrastructure, land, monetary contributions or other Material Public Benefits beyond those anticipated in a contributions plan, or where greater flexibility in delivery and timing is required.

For renewable energy development, which is typically assessed as State Significant Development, VPAs are the primary mechanism for delivering community benefits. A VPA facilitates the provision of Community Benefit Contributions (**CBCs**), enabling local communities to share in the broader economic benefits of development. CBCs are separate from standard local infrastructure contributions and are generally provided as recurrent contributions over the life of the development, in accordance with the Department of Planning, Housing and Infrastructure's (**DPHI**) Benefit-Sharing Guideline.

Overall, the Policy ensures that development contributes appropriately to local infrastructure and community outcomes, while providing flexibility to respond to site-specific circumstances and opportunities. It supports a transparent, consistent and outcome-focused approach to negotiating Developer Agreements across the Upper Lachlan Shire.

1 Definitions

Acceptability Test – Setting criteria to assess offers to enter into Developer Agreements to ensure they will deliver a legitimate public benefit.

Bank Guarantee – Means an irrevocable and unconditional undertaking in favour of Council to pay an amount or amounts to the Council on demand

Community Benefit fund - A fund established to receive, manage and distribute community benefit contributions for the benefit of the local community in accordance with agreed governance arrangements.

Community enhancement fund - this fund is for community-led initiatives, grants, sponsorships, events, minor works or similar local projects.

Community Benefit Contribution (**CBCs**) – A contribution by renewable energy developer under a VPA (renewable) to enable the Upper Lachlan Shire community to share in the broader economic benefits of renewable energy development. A CBC may be used to fund community enhancement initiatives, local infrastructure, services, facilities or other public benefits in accordance with this Policy and the terms of the VPA.

Contributions Plan – Is a document that has been publicly exhibited and adopted by Council pursuant to section 7.18 of the EP&A Act

Council – Upper Lachlan Shire Council

Developer – The owner of land or a Developer engaged by an owner of land to develop the land on behalf of the owner.

Developer Agreements / Agreements – Describes an agreement between Council and a Developer / Landowner to facilitate the provision of local infrastructure or public benefits, and includes Works In Kind Agreements and Voluntary Planning Agreements

Development Application – Means an application for consent to carry out development, made to the consent authority under the EP&A Act.

Development Consent / Conditions of Consent – Means a development consent issued for a development application. A Condition of Consent describes the conditions under which the Consent is granted, which may include the payment of Developer Contributions

Developer Contributions – Means a monetary contribution, dedication of land, the carrying out of work of the provision of any other Material Public Benefit, or combination of them, to be used for or applied to the provision of local public infrastructure

Developer Credit – The value difference where infrastructure delivered by a developer exceeds the value required under a developer contribution condition for a given infrastructure category.

Developer works – Works required as conditions of consent that do not need to be facilitated via a Developer Agreement.

DPHI – Department of Planning, Housing and Infrastructure

EP&A Act – Means the *Environmental Planning and Assessment Act 1979*

EP&A Regulation – Means the *Environmental Planning and Assessment Regulation 2021*

Explanatory Note – Provides an overview of the terms and conditions in a VPA

In Principle – Preliminary and conditional confirmation of acceptance of an offer subject to further negotiation

Landowner / Owner – An owner of land

Letter of Offer – A formal signed application to Council offering to enter into an agreement that is on letterhead and contains the information required in **Table 2**.

LGA – Local Government Area

Material Public Benefit – Generally not a monetary contribution or dedication of land but provides a public benefit. Material Public Benefit (or **MPB**) does not exclusively mean an infrastructure works item, it can be provided as a social, economic, environmental or cultural benefit.

Offset - The value of infrastructure works, land dedication or other contributions provided by a developer that is applied to reduce the amount payable under a developer contribution condition for a given infrastructure category.

Voluntary Planning Agreement / VPA (urban) – Has the same meaning in section 7.4 of the EP&A Act and has the purpose of providing local public infrastructure to support residential and non-residential development.

Voluntary Planning Agreement / VPA (renewable) – Has the same meaning in section 7.4 of the EP&A Act and has the purpose of providing local public infrastructure and/or a Community Benefit Contribution as described in **Appendix A** to support renewable energy development projects

Renewable Energy Community Benefit Contribution Fund (RE**CBCF**) – A fund that responds to identified needs across the Upper Lachlan Shire LGA. These funds will be allocated by Council resolution, having regard to Council's strategic priorities, infrastructure needs, community benefit, equity across the LGA, and the cumulative distribution of benefit-sharing funds from renewable energy projects.

Works In Kind Agreement / WIKA – An agreement for an applicant to a development application to undertake a work nominated in an active Contributions Plan.

2 Background

2.1 Why has Council prepared this Policy?

Council has prepared the Developer Agreements Policy (the **Policy**) to describe the process and governance obligations of both the applicant and Council when applying, negotiating and executing Works in Kind Agreements (**WIKAs**) and Voluntary Planning Agreements (**VPAs**).

2.2 Objectives of this Policy

The objectives of the Developer Agreements Policy are to:

- Provide guidance on the appropriate use of Developer Agreements (**Agreement/s**)
- Establish a transparent and auditable framework for the application, assessment and execution of Agreements with Council
- Ensure that all development in the LGA makes a positive contribution to public amenity
- Communicate Council's and the legislative expectations of the information to be included in a Letter of Offer to enter into an Agreement
- Provide a consistent approach to the assessment and negotiation of offers to enter into an Agreement
- Allow for provision of local infrastructure and services in a manner that is consistent with Council's strategic and infrastructure plans
- Describe the governance framework that will oversee the process from application to execution
- Describe the governance framework to oversee the administration of Planning Agreements (particularly renewable energy development)

2.3 Scope

The Policy will apply to any Agreement to which Council is a party. This can be over any land in the LGA, but also Agreements that Council is a party to but might straddle a LGA boundary.

The Policy applies whenever a Developer or Landowner approaches Council with the intent to offer a Material Public Benefit under Section 7 of the *Environmental Planning & Assessment Act 1979* (the **Act**).

3 What is a Developer Agreement?

For the purposes of this Policy, a Developer Agreement is an agreement between Council and a developer and in some cases a landowner, that facilitates the delivery of local infrastructure or public benefits. This may include the carrying out of works on behalf of Council, the payment of monetary contributions or the provision of other public benefits.

Council will consider offers to enter into the following types of Developer Agreements:

- Works In Kind Agreements (**WIKA**) as legislated under section 7.11 of the Act.
- Planning Agreements (also known as Voluntary Planning Agreements or **VPAs**) as legislated under section 7.4 of the Act.

3.1 When is a Developer Agreement appropriate?

The most appropriate Agreement should be selected in each circumstance to ensure it is mutually beneficial and adequately addresses any risks documented in Council's Risk Register or identified during the negotiation process. This selection should be guided by the nature of the development and the developer contributions being offered. Where the Offer is limited to delivering works identified in an active contribution plan, a WIKA is generally the most effective mechanism. Where the Offer is seeking to deliver items (land or works) beyond those envisaged in the contribution plan, or includes recurrent costs, a VPA should be used.

Table 1 summarises when a certain type of Developer Agreement is appropriate. Succeeding subsections provide further detail on each type of Developer Agreement.

Table 1 Appropriate use of Developer Agreements

Delivery mechanism	Application
Works in Kind Agreements (**WIKA**)	For the delivery of infrastructure works that have been identified in a Contribution Plan applying to the development land, noting that a WIKA can only facilitate the delivery of infrastructure works identified in a s7.11 plan. The value of works is offset against the applicable s7.11 contribution, and any land required for those works must be dedicated via condition of consent.
Voluntary Planning Agreements (**VPA**) (urban)	VPAs may include items from a contributions plan but is typically used to facilitate the delivery of infrastructure, land, monetary contributions or other public benefits which may be additional to or in place of those identified in a Contributions Plan.
VPA (renewable)	All State Significant renewable energy development is required to enter into a VPA to facilitate the delivery of benefits under a Community Benefit Scheme. The provision of community benefits does not preclude a development from including standard VPA contributions, nor does it exempt the development from contributing to local infrastructure under a relevant Contributions Plan, unless otherwise agreed by Council.
No Developer Agreement	Developer works required as conditions of consent do not need to be facilitated via a WIKA or a VPA. To be clear, works identified as a development cost with no wider public benefit will be required as a condition of consent and will neither offset any local contributions required to be paid nor count toward community benefit requirements.

3.2 Works in Kind Agreements

A Developer can offer to enter into a WIKA with Council to deliver infrastructure works identified in a s7.11 contributions plan[1]. This delivery typically results in an offset or reduction to the monetary contribution required under the relevant development consent. Where a Developer offers to deliver infrastructure works identified in a s7.12 contributions plan, this can only be done through a VPA.

The proposed works must be consistent with the intent of the contributions plan, including the location and the scope of works, which must be materially the same as those identified in the plan. The indexed value of the works, as identified in the contributions plan, will be used to offset the s7.11 obligation required as a condition of development consent.

A WIKA can be offered and negotiated prior to the determination of the development application to which it relates but cannot be executed until after development consent is issued. This is because a WIKA is attached to a development consent and cannot exist independently. Once executed, a WIKA modifies the s7.11 condition of the relevant development consent. The executed WIKA specifies the extent to which the value of works offsets the monetary contribution required under that condition (see Cross-bucketing below).

Cross-bucketing

When the value of works under a WIKA is used to offset the payment of monetary contributions under a given infrastructure category, this may sometimes result in surplus value. Cross-bucketing allows this surplus value to offset contribution obligations across other infrastructure categories. For example, if a road being delivered under a WIKA has the value of more than the contribution towards roads in the developer contributions condition, then the excess value can be used to offset the obligation for open space.

For the purposes of this Policy, cross-bucketing is wholly at the discretion of Council and will be considered on a case-by-case basis. In determining whether to permit cross-bucketing under a WIKA, Council will consider whether it will adversely affect the funding or delivery timing of the remaining infrastructure in the contributions plan.

Developer Credit

If, after its assessment, Council does not agree to cross-bucketing and the developer still agrees to deliver the infrastructure, the difference between the value of works delivered through the WIKA and the contribution required under the development consent may be recognised as a Developer Credit.

Section 7.11(6) of the EP&A Act requires a Council to acknowledge any Developer Credit arising from previous development consents on land within the relevant contribution plan application area. Where Developer Credits cannot be offset against a future development consent (i.e. the Developer has no further development or landholdings within the contributions plan area). Council is under no obligation to repay that credit.

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[1] A WIKA cannot be used to facilitate the delivery of infrastructure works unless it is identified in a s7.11 contributions plan. This means that the delivery of works identified in a s7.12 contributions plan cannot be facilitated via a WIKA.

3.3 Voluntary Planning Agreements

A Planning Agreement is a voluntary agreement between Council and a Developer and / or a Landowner, under which the Developer agrees to provide developer contributions. Where the Developer is not the Landowner, the Landowner must also be a party to the agreement. This is because VPAs are registered on title, rather than being tied to a development consent like WIKAs.

A VPA is different to a WIKA in that:

- A VPA can operate in place of, or alongside a contributions plan and may exclude the application of s7.11 and / or s7.12 contributions on the land to which it applies.
- A VPA can deliver public benefits that exceed those required by the contributions plan.
- A VPA can deliver a broader range of public benefits, including works, land, monetary contributions or other Material Public Benefits.
- A VPA is registered on the land title rather than the development consent. This means that obligations agreed under the VPA continue to apply to future landowners while the VPA remains in force.
- A VPA can provide flexibility in the timing of infrastructure delivery and contribution obligations. This may have the effect of improving both parties' cash position.
- A VPA can include provisions for ongoing / recurrent costs through either extended maintenance periods or cash to fund maintenance or operational costs of an asset.
- A VPA is subject to community oversight, with an explanatory note and public exhibition prior to execution of the Agreement.

The nature and extent of developer contributions and infrastructure delivered under a VPA are negotiated between the parties involved. Council's preference is that VPAs deliver public benefits that go beyond those identified in a contributions plan. Accordingly, a VPA will generally only be pursued where it provides an additional or enhanced public benefit outcome, and the acceptance of any offer to enter into a Planning Agreement is at the absolute discretion of Council.

For the purposes of this Policy, there are two types of Planning Agreements:

a. VPAs (urban) which are proposed in connection with:

    i. a planning proposal to change the planning controls applying to land to be used for residential or non-residential purposes (other than renewable energy development); or

    ii. a development application (or a modification to a development application) for consent to carry out development as described in (i) above.

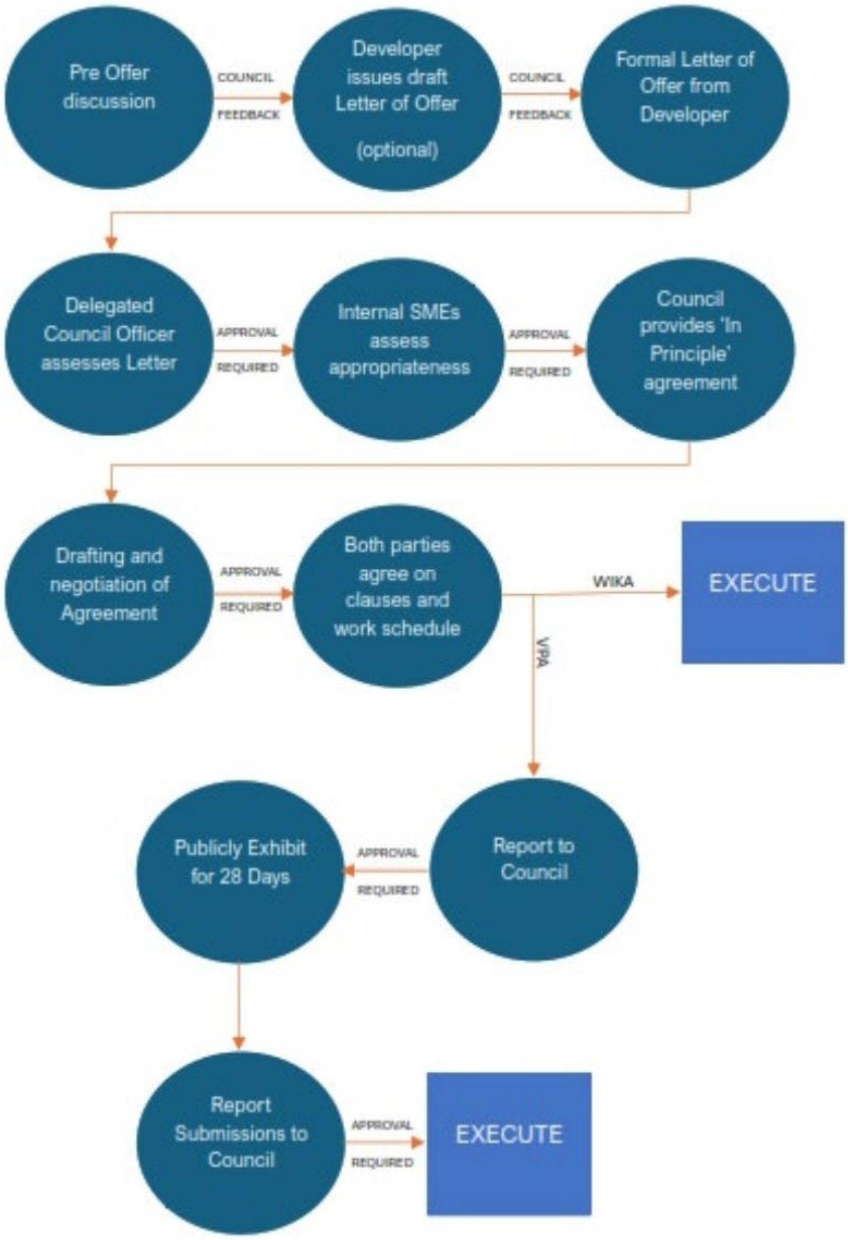
b. VPAs (renewable) which are proposed in relation to renewable energy development. **Appendix A** provides further information / considerations for VPA (renewable) offers.

4 Entering into a Developer Agreement

This section describes the process for Council to assess and progress a Letter of Offer through to Agreement execution. This includes the preparation and review of draft and formal offers, negotiation of Planning Agreements, the role of Council staff, and public exhibition requirements.

Council will follow the workflow shown in **Figure 1** to assess Developer Agreements. A draft Letter of Offer may be submitted prior to a formal Letter of Offer. Council may provide feedback on a draft offer to guide the Developer's formal Offer; however, in-principle support cannot be given at draft offer stage.

Figure 1 – Workflow for Assessing Developer Agreements



4.1 Making an Offer

An Offer from a Developer or Landowner to enter into a Developer Agreement with Council needs to include the information outlined in **Table 2**, as a minimum. A Letter of Offer to enter into a WIKA differs slightly to that of a VPA and these differences are noted below.

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Table 2 Information required in a Letter of Offer

Requirement	WIKA	VPA
General		
Legal identification of land covered by the Agreement	ü	ü
Identification of all parties to the agreement	ü	ü
Primary contact for the Offer (if applicable)	ü	ü
Offer must be on a company letterhead	ü	ü
Confirmation that an Offer conforms with this Policy	ü	ü
Signatories		
Letter of Offer must be signed by the Developer/s and Landowner/s[2]		ü
Letter of Offer must be signed by the applicant/s to the DA[2]	ü	
Development information		
The Planning Proposal it accompanies (if applicable)		ü
The development to which it applies	ü The associated development consent/s must be identified.	ü
Developer Contributions		
Work that is offered	ü	ü
Land that is offered		ü
Monetary contribution offered		ü
Timing of delivery of items offered[3]	ü	ü
Confirmation the offer is consistent with the contribution plan	ü	
Whether s7.11 or s7.12 will still apply		ü

[2] The Letter of Offer may be signed by a single party on behalf of the offering parties, provided an Authority to Act from all other non-Council parties is attached.

[3] WIKAs deliver infrastructure in accordance with the contributions plan; however, Council may agree to alternative delivery timing. This may affect how the obligation is secured. See **Section 5 Administration**

Requirement	WIKA	VPA
Administration		
The dispute resolution mechanism		ü
Required securities for entering into the Agreement (see Section 5 Administration)		ü

4.2 In-principle Agreement

On receipt of a formal Letter of Offer, the delegated Council officer will assess the offer to ensure it complies with this Policy and has addressed any previous advice given by Council to inform the offer.

DPHI's Local Infrastructure Contributions Practice Notes will guide Council's assessment of VPA offers. Specifically, the acceptability test outlined in **Table 3** below will be applied.

Table 3 Planning agreements acceptability test

Planning agreements acceptability test
Councils should ensure planning agreements:
A. Are directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development.
B. Provide for the delivery of infrastructure or public benefits not wholly unrelated to the development.
C. Produce outcomes that meet the general values and expectations of the public and protect the overall public interest.
D. Provide for a reasonable means of achieving the desired outcomes and securing the benefits.
E. Protect the community against adverse planning decisions.

Source: Taken from Using planning agreements | Planning Portal - Department of Planning and Environment

For VPAs (renewable) the Acceptability Test will be applied along with the considerations below:

- Appropriate mitigation of impacts to the existing amenity on the existing community
- How the community can share in the benefit from the development, (see the 2024 Benefit-Sharing Guideline by DPHI).

If the offer is compliant, the delegated officer will issue the offer to the relevant internal stakeholders and subject matter experts (**SMEs**) for comment. If at the end of this process the internal stakeholders are generally supportive of the offer, Council will issue in-principle agreement to the Developer. In-principle agreement triggers the commencement of the formal negotiation phase.

4.3 Negotiation

During the negotiation phase, Council-requested changes to the offer will be discussed and the draft Agreement will be created. Unless agreed otherwise between parties at the commencement of this phase, Council's lawyers will draft the Agreement (At the Developers Cost).

Once Council is satisfied with the first draft of the Agreement, it will be issued to the Developer for their review. Comments and requested changes from the Developer are to be done as tracked changes and not via a separate letter or email. This maintains version control and ensures an accurate record of the negotiation process.

When all parties agree on the draft Agreement and the scope of the items offered, the Developer is to provide, written agreement (letter or email) that the negotiation phase is complete.

If the Agreement being negotiated is a WIKA, Council's lawyers will provide Council with a clean copy of the Agreement for execution. WIKA will be negotiated and agreed to by Delegated Council Staff.

If the Agreement being negotiated is a VPA, Council Officers will prepare a Council report, with a recommendation requesting Council approval to place the draft Agreement and supporting Explanatory Note on public exhibition for a minimum pf 28 days.

4.4 Public Exhibition - Planning Agreements

A VPA cannot be executed until the draft Agreement has been publicly exhibited for at least 28 days in accordance with s 7.5(1) of the EP&A Act. Public exhibition can only occur after the draft Agreement has been reported to Council and the rescission period for the resolution has expired.

Following the public exhibition period, a report on any submissions received will be prepared for Council. If Council approves the VPA and the rescission period has expired, a clean copy of the Agreement will be provided to the Developer and, if required, any Landowners for execution. Once executed by the Developer and Landowners, a delegated Council employee will sign the Agreement and ensure all parties receive a wet-ink copy.

4.5 Role of Council staff

All Council employees are expected to comply with Council's Model Code of Conduct Policy and ensure that all interactions, negotiations and assessment of Developer Agreements are transparent and in the best interests of the Upper Lachlan Shire community.

Table 4 are the roles and responsibilities of Council staff in relation to the assessment and execution of a Developer Agreement.

The negotiation and administration of WIKAs is a wholly operational task in that it delivers infrastructure works already approved when the contributions plan was considered by Council and the community. As a result, approval from elected Council or the community is not required again.

As a result, the assessment and execution of a WIKA will be under delegated authority as shown in Council's delegations register.

Similarly, negotiation and administration of VPAs is an operational task. However, the involvement of elected Council is required for the approval of the draft VPA to go on public exhibition to execute the Agreement.

The role of Councillors is to approve outcomes ensuring that the community's interests have been properly considered, but they do not engage in the negotiation of Developer Agreements. If a Developer approaches a Councillor regarding a proposed or draft Developer Agreement, this will be reported to the General Manager to ensure the probity and transparency of the process is maintained.

Table 4 Roles and responsibilities when assessing, negotiating and executing a Developer Agreement

Role	Responsibility	Agreement Type
Councillors	Consider draft VPAs for public exhibition	VPA
	Consider exhibited VPA for execution	VPA
Executive	Provide oversight to the negotiation	All
	Approve VPAs to go to Council	VPA
	Execute Agreements under delegation	VPA
Officer	Meet with Developers and landowners	All
	Assess Letter of Offer	All
	Approve or reject Letter of Offer (after internal consultation has occurred)	All
	Represent Council in negotiation	All
	Report draft to Council for public exhibition	VPA
	Report to Council on public exhibition	VPA
Consultants	Drafting/reviewing legal Agreement (Lawyers)	All
	Costing works (Quantity Surveyor)	VPA

5 Administration

5.1 Securities

To ensure that infrastructure and other obligations under a WIKA or VPA are delivered in accordance with agreed terms, Council will require the provision of securities. Securities provide assurance that obligations will be fulfilled and, where necessary, enable Council to step in to complete or rectify works in the event of non-performance.

5.1.1 Types of securities

Non-cash securities are mechanisms that secure performance of obligations through statutory or legal controls. These typically include conditions of consent, restrictions on the issue of a Subdivision Certificate, or registration of VPAs on title. They ensure that infrastructure and other obligations under a WIKA or VPA are delivered to Council's satisfaction within the agreed timeframes.

Cash securities involve the provision of a monetary bond, bank guarantee or similar instrument that Council can draw upon if the developer fails to fulfil its obligations. This provides Council with a financial fallback to complete, rectify or maintain infrastructure where required.

For WIKAs, cash securities will be used where works are deferred and a Subdivision Certificate is issued, effectively replacing the withholding of the certificate as Council's security. For VPAs, cash securities will be required due to mitigate the risks associated with works not being completed, land not being dedicated or monetary contributions not being paid.

5.1.2 Applicable securities

Table 5 summarises the securities required upon entering into a WIKA or a VPA or in cases where the delivery of an item is deferred. The sub-headings below provide further information on the securities applicable to a WIKA and a VPA.

Works in Kind Agreements

A WIKA is bound to the development consent and is therefore enforceable through the same mechanisms as the consent. WIKA obligations may be secured by requiring the Developer to achieve Practical Completion prior to the issue of a Part 5 certificate like a subdivision certificate or construction certificate.

In the event that this cannot be achieved, the WIKA may allow for the Developer to request a deferral of infrastructure delivery. If approved, the Developer will be required to provide Council with a Bank Guarantee to the value of 110% of the outstanding work. Council will approve a time extension up to 12 months from when the work was required under the WIKA.

Planning Agreements (urban and renewable)

Unlike a WIKA, a VPA is registered on the land title rather than bound to a development consent. The VPA will be required to be registered on title, at the Developers cost, within 14 days of the Agreement being executed. This acts as the primary enforcement of VPA obligations as registration of the Agreement on title will appear on the 10.7 certificate as an encumbrance and will not be removed unless the obligations associated with that land parcel have been completed.

The Benefit Sharing Guideline, informing renewable VPAs, also requires the consent authority to consider *"whether any conditions of consent may be appropriate to ensure the applicant's* *proposed benefit-sharing model will be implemented"*. Where renewable energy development includes this condition in their consent, Council may consider a reduction to the cash security required.

To mitigate the risks associated with works under a VPA commencing but not being completed, cash securities will be required, as reliance on non-cash mechanisms alone may not provide sufficient assurance. Accordingly, Council will typically require a Bank Guarantee within 14 days of the Agreement being executed.

At Council's discretion, the value of this security may be based on:

- The value of the most expensive item in the VPA
- The annual community benefit contribution value
- An agreed $ figure or % of the total VPA value

Similar to the deferral of works under a WIKA, a Developer may request to defer the delivery of infrastructure required under a VPA. Where Council approves the deferral, the Developer must provide Council with a Bank Guarantee equal to 110% of the value of the outstanding works. Council may approve a time extension of up to 12 months from the date the works were otherwise required to be delivered under the VPA. This deferral security is in addition to any security already provided to Council at the time the VPA was executed.

Table 5 Summary of applicable securities

Agreement	Non-cash security	Cash security
WIKA	Release of subdivision / construction certificate (linked with development consent)	Not required
WIKA – delivery deferred	N/A	110% of the outstanding works value
VPA	Registration on title Potential inclusion in conditions of consent	At Council's discretion, the value of the required cash security may be based on: • The value of the most expensive item in the VPA • The annual community benefit contribution value • An agreed $ figure or % of the total VPA value
VPA – item deferral	N/A	110% of the outstanding works value in addition to the cash security required upon entering into a VPA

5.2 Costs

The developer will meet the Council's costs in preparing an Agreement, including any review, negotiations and consideration of adjustments in line with the template.

APPENDIX A: VPAS (RENEWABLE)

A.1: Renewable energy development

Large-scale renewable energy developments are typically assessed as State Significant Development (**SSD**), with the State Government acting as the consent authority. As a result, local infrastructure contributions that might otherwise be imposed by Council as a condition of development consent under section 7.11 or section 7.12 of the EP&A Act are not typically imposed in the same way for renewable energy development.

Despite this, councils play a key role in negotiating Planning Agreements to ensure host communities share in the benefits of renewable energy development. In practice, renewable energy projects typically enter into Planning Agreements with the relevant local council to secure community benefit contributions, which may be used to deliver community enhancement initiatives, local infrastructure, services, facilities or other public benefits.

The Department of Planning, Housing and Infrastructure (**DPHI**) has prepared the Benefit-Sharing Guideline, which establishes a framework for delivering community benefits from large-scale renewable energy projects. While the Guideline provides a baseline approach, it is not intended to limit outcomes.

In negotiating and assessing an offer to enter into a VPA (renewable), Council will seek to secure community benefit contributions that deliver meaningful benefits for the Upper Lachlan Shire community, respond to the scale, location and impacts of the development, and provide Council with sufficient flexibility to allocate funds toward community enhancement initiatives and local infrastructure outcomes across the LGA.

A.2: What is benefit-sharing?

Benefit-sharing is the process of distributing the economic and social benefits of renewable energy development to the communities that host and are most affected by that development. The need for benefit-sharing arises because the broader benefits of renewable energy development, such as decarbonisation and energy security, are realised at a state-wide level, while the impacts are experienced locally.

The Benefit-Sharing Guideline identifies different forms of benefit-sharing, including neighbourhood benefits and community benefits. For the purposes of this Policy, Council's focus is on the community benefit contribution offered to Upper Lachlan Shire Council under a VPA (renewable).

As described in the Benefit-Sharing Guideline, community benefit contributions received by Council may be used to deliver community enhancement initiatives, local infrastructure, services, facilities or other public benefits that support the Upper Lachlan Shire community. These contributions are intended to provide broader and ongoing community benefit, rather than merely address private impacts or site-specific development requirements.

Benefit-sharing arrangements should:

- Be incorporated as standard practice for large-scale renewable energy development;
- Be developed collaboratively between Council, the Developer and the community;
- Be community-focused, delivering direct and meaningful local outcomes;
- Deliver positive social and physical amenity outcomes for communities experiencing the impacts of development;
- Be proportionate to the scale and impact of the development, delivering lasting social, environmental and economic benefits; and

- Be transparent, with clear governance and reporting arrangements.

A.3: Community benefit contributions

Community benefit contributions (**CBCs**) are the primary mechanism through which community benefits are delivered to Council under a VPA (renewable).

The following benefit-sharing rates, as recommended by DPHI in the Benefit-Sharing Guideline, represent the minimum expected annual **CBCs** from renewable energy development:

- $850 per megawatt per annum for solar energy development;
- $1,050 per megawatt per annum for wind energy development; and
- $150 per megawatt hour per annum for stand-alone battery energy storage systems (**BESS**) located in a rural zone.

Rates are calculated based on installed capacity or energy output and are payable annually over the life of the development (including any approved modifications). Annual contributions will be adjusted in accordance with the Consumer Price Index (**CPI**) All groups Sydney. As part of an offer to enter into a VPA (renewable), a Developer may propose that some contributions be paid at an earlier stage where this would support the timely delivery of community benefit initiatives or local infrastructure outcomes.

The acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council. Offers that do not deliver CBCs to Council equal to or better than the above rates will generally not be supported by Council.

VPAs may include provisions for periodic review and amendment to ensure that community benefit contributions remain appropriate over the life of the development. Any review should have regard to changes in the development, relevant legislation, government policy, community needs and local infrastructure priorities.

A.4: What counts toward the minimum CBCs?

Council recognises that DPHI's Benefit-Sharing Guideline calculates the total benefit-sharing value by reference to both neighbourhood benefits and local community benefits, including benefits that may be distributed across more than one local government area where impacts are experienced across council boundaries.

However, Council is not generally a party to, or privy to, the negotiation of neighbourhood benefits, private agreements, or benefit-sharing arrangements with other councils. Unless Council expressly agrees otherwise, these arrangements will be treated as separate from the contribution offered to Upper Lachlan Shire Council under a VPA (renewable).

For the purposes of Council's assessment of an offer to enter into a VPA (renewable), Council will generally not treat the value of the following items as contributing toward, or reducing, the minimum annual **CBCs** payable to Council under Part A.3:

- neighbourhood benefits and private agreements with neighbouring landowners,
- benefit-sharing contributions paid or offered to other councils, and
- works required as a condition of consent or required to directly service the development such as access roads, road upgrades or other site-specific infrastructure.

Where a project has impacts across multiple local government areas, Council may have regard to the broader distribution of benefits when assessing the overall reasonableness of an offer. However, this does not reduce Council's expectation that an offer to Upper Lachlan Shire Council will deliver an appropriate community benefit having regard to the scale, location and impacts of the development within the Upper Lachlan Shire LGA.

A.5: Community Benefit Funds

CBCs collected under a VPA (Renewable) are typically pooled into a community benefit fund, being a fund established to receive, manage and distribute contributions for the benefit of the local community in accordance with agreed governance arrangements.

This Policy outlines two potential fund arrangements that money can be allocated to as part of entering into a VPA with ULSC. The first is the **Renewable Energy Community Beneif Contribution Fund (RECBCF)**, a fund that responds to identified needs across the Upper Lachlan Shire LGA. The **RECBCF** will be allocated by Council resolution, having regard to Council's strategic priorities, infrastructure needs, community benefit, equity across the LGA, and the cumulative distribution of benefit-sharing funds from renewable energy projects.

The second is the establishment of **Community Enhancement Funds** for individual Renewable Energy projects**,** this fund is for community-led initiatives, grants, sponsorships, events, minor works or similar local projects. Community Enhancement funds may be administered by Council (At the Developers Cost) or in partnership with the community and are intended to deliver a range of local initiatives and projects.

Examples of community benefit fund expenditure may include:

- recurrent costs of infrastructure, services or facilities;
- additional or improved open spaces, public facilities or infrastructure (e.g. upgrades to parks, libraries, community centres, showgrounds, museums and transport infrastructure);
- funding or delivery of works for neighbourhood facilities;
- initiatives delivered in partnership with local organisations, including scholarship and training programs;
- sponsorship of community events; and
- sponsorship of local groups such as sporting clubs, biodiversity groups and community gardens.

Council's preference is that the majority of community benefit contributions received under a VPA (renewable) are allocated to the **Renewable Energy Community Beneif Contribution Fund.**

Unless Council resolves otherwise, no more than 15% of the annual VPA contribution value is to be committed at the time of VPA execution to a **Community Enhancement Fund.** This is consistent with section 3.3 of DPHI's Benefit Sharing Guidelines.

APPENDIX B: VPA TEMPLATE (URBAN)

DRAFT

Planning Agreement

LAND:

XXX XXX XXX

Lot XX in DPXXX

PARTIES:

Upper Lachlan Shire Council

(Council)

XXX XXXX

(Developer)

EXECUTED:

[INSERT DATE] 20XX

a. Version control table to be deleted once PA finalised		
Version	**Date**	**Notes**
V1.01	xxxxxxxx	Draft PA Template
V1.02	xxxxxxxx	Draft PA prepared by Developer; issued to Council
V1.03	xxxxxxxx	Council edits to draft PA
V1.04		
V1.05		
V1.06		
V1.07		
V1.08		
V1.09		
V1.10		

This draft Planning Agreement template is subject to legal review

CONTENTS PAGE

PARTIES

Upper Lachlan Shire Council ABN 81 011 241 552 of 123 Yass Street, Gunning NSW 2581 (**Council**)

XXXXX ABN XXXXXX of XXXXXX (**Developer**)

BACKGROUND

A. The Developer is the sole owner of the Land.
B. On XXXXX, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
C. That Development Application was accompanied by an offer by the Developer to enter into a Planning Agreement to provide the Public Benefits if Development Consent was granted.
D. Council determined the Development Application by granting the Development Consent on XXXXXX. Condition XXXX of the Consent requires that the Developer enter into a planning agreement in accordance with its offer.
E. The parties agree that the Developer entering into this planning agreement with the Council meets the requirements of condition XX of the Development Consent.

1 - Definitions

The following definitions apply unless the context otherwise requires:

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

Acceptance of Completion Notice means a notice issued by the Council to the Developer pursuant to **clause XX.**

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

Agreement means this planning agreement.

Assign as the context requires refers to any assignment, novation, sale, transfer, disposition, take over, declaration of trust over or other assignment of a legal and/or beneficial interest.

Attributed Value means:

(a) with respect to Designated Land, the amount specified in table X headed "Attributed Value" at **XX** for each item of Designated Land; and

(b) with respect to each Item of Works, the Development Cost of that Item of Works determined in accordance with **clause X**.

Authority means (as appropriate) any:

(a) federal, state or local government;

(b) department of any federal, state or local government;

(c) any court or administrative tribunal; or

(d) statutory corporation or regulatory body.

Bank Guarantee means a bank guarantee from an Australian bank that is provided to the Council by the Developer under this Agreement which is:

(a) in a form acceptable to the Council, acting reasonably;

(b) unconditional and irrevocable; and

(c) without an expiry date.

Bioretention Basin means water sensitive urban design infrastructure associated with the Works on Dedicated Lands being the range of measures that are designed to avoid or minimise the environmental impacts of urbanisation in terms of the demand for water and the potential pollution threat to natural waterways.

Business Day means between 9am and 5pm Sydney time on a day other than a Saturday, Sunday, any other public holiday in New South Wales and any day between 27 and 31 December inclusive.

Claim against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Certifier has the same meaning as in the Act.

Complete, **Completed**, **Completion** means completed in accordance with the requirements of this Agreement.

Construction Certificate has the same meaning as in Part 6 of the Act.

Council means Upper Lachlan Shire Council.

Date of Completion means, in relation to each Item of Work, the date on which the works are Completed as set out in an Acceptance of Completion Notice

Default Event means any of the following events:

(a) a party fails to pay any amount payable by it under this Agreement when it is due;

(b) a party fails to duly observe and perform any of its obligations under the Agreement;

(c) a party gives a representation or warranty under the Agreement that is materially incorrect, untrue or misleading;

(d) a party commits any other material breach of the Agreement; or

(e) a party fails to comply with the Law.

Defect means anything in the Item of Works which:

(a) adversely affects the ordinary use and/or enjoyment of that item; or

(b) is likely to require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect, other than maintenance or rectification that would typically be required for an Item of Works of that nature at that time.

Defects Liability Period means, in relation to each Item of Works, the period during which the Developer is liable for any defects under clause X, as set out in **Item X** of **Schedule 2**

Designated Land means that part of the Land identified as Designated Land on the plan attached as **XXXX.**

Development means the development of the Land by the Developer as described in **Item X** of **Schedule 2**.

Development Application means the development application lodged by the Developer with Council for the Development.

Development Consent means a development consent issued under the Act to the Development Application.

Development Cost for an Item of Works means the construction costs of that Item as determined by a Quantity Surveyor in accordance with clause XX

Developer means XXXXX

Drainage Reserves and Basins means that part of the Works comprising drainage reserves and the Bioretention Basin, as set out in **Table X**.

Encumbrance means any:

(a) lease, licence, mortgage, easement, restrictive covenant, caveat or similar restriction over the Land, whether or not registered on the title of the land;

(b) interest or arrangement of any kind that creates a Security Interest or otherwise secures the payment of money or the performance of an obligation or which gives a creditor priority over unsecured creditors in relation to the Land; and

(c) agreement to create any of the things listed in paragraph (a) or (b) above or to allow any of them to exist.

Final Basin State means the completion of the following works to a Bioretention Basin:

(a) installation of sub surface drainage pipes, risers, flushing points, and pit connection;

(b) installation of the drainage layer minimum 275mm thick;

(c) installation of the transition layer minimum 100mm thick to prevent the migration of the filter media into the drainage layer;

(d) installation of and filter media layer minimum 400mm thick in two lifts;

(e) installation of tube stock planting to stabilise the basin;

(f) any other requirements listed in the Development Consent and XXX.

Final Lot means a single lot created in the Development intended for separate residential occupation and disposition, not being a lot created by a subdivision of the Land.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.

Insolvency Event means, in relation to the Developer, any of the following:

(a) the Developer becomes insolvent;

(b) the Developer assigns any of its property for the benefit of creditors or any class of them;

(c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Developer or the Developer enters into a scheme of arrangement with its creditors or is wound up;

(d) the holder of a Security Interest takes any step towards taking possession of or takes possession of whole of the Land.;

(e) a judgment or order is made against the Developer in an amount exceeding $10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 days after being made;

(f) any step is taken to do anything listed in the above paragraphs; and

(g) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

Inspection means an inspection of an Item of Works, including of the relevant elements in **XXX.**

Item of Works means an individual item of the Works as set out in Item **X** of **Table X** in **X**.

Land means the land described in **Item X** of **Schedule 2**

Law means all applicable legislation, regulations, by-laws, common law and other binding order made by any Authority, including any applicable Planning Legislation and Environmental Law as defined at **clause X.**

Maintenance Liability Period means the period of time set out in **Item X** of **Schedule 2**

Maintenance Obligations means the maintenance obligations set out in **Item X** of **Table X** in **XX.**

Maintenance Security Amount means the amount of security required under clause X as set out in Table X of **XX.**

Monetary Contributions means the monetary contributions set out in **Item X.** in **Table X** of **XX.**

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW) and, once commenced, the *Building (Approvals and Practitioners) Act 2026*.

Public Benefits means the provision of the Works, the making of the Monetary Contributions, performance of the Maintenance Obligations and the dedication of the Designated Lands to the Council by the Developer in accordance with this Agreement.

Quantity Surveyor means someone selected from a list of Quantity Surveyors all of whom must be members of Panels for the NSW Department of Commerce or Local Government Procurement, and suitably qualified to undertake the tasks set out in **clause X**

Security Interest means:

(a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the Personal Property Securities Act 2009); and

(b) any agreement to create or grant any arrangement described in paragraph (a).

Security Value means the value which is given to each Item of Works in **Table X** of **XX.**

Subdivision Certificate means a subdivision certificate as defined in section 6.4(d) of the Act.

Subdivision Works Certificate means a subdivision works certificate as defined in section 6.4(b) of the Act.

Works means the works specified or described in **Item X** of **Table X** in **XXX.**

Works as Executed Plan means a plan and supporting files that details the works as constructed and conforming with the approved engineering plans, specifications in Table X and any requirements in **XXX.**

2 - Interpretation

The following rules of interpretation apply unless the context requires otherwise:

2.1.1 Any reference to a clause, annexures and schedules refers to a clause in, or annexure or schedule to this Agreement.

2.1.2 Any reference to a statute refers to a statute, ordinance, code or other law and includes regulations and other instruments, including environmental planning instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

2.1.3 The singular includes the plural and vice versa.

2.1.4 A reference to a person includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.

2.1.5 A reference to executors, administrators or successors refers to a particular person that includes their executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

2.1.6 Dollars, Australian dollars, dollars, $, AUS $ or A$ is a reference to the lawful currency of Australia.

2.1.7 Where any period of time is calculated from the given day or day of an act or event, it is to be calculated exclusive of that day.

2.1.8 A day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

2.1.9 A group of persons or things is a reference to any two or more of them jointly and to each of them individually.

2.1.10 The words include, including, for example or such as are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

2.1.11 If an act under this Agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.

2.1.12 If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

2.1.13 Any time of day referenced in this Agreement is a reference to Sydney time.

2.1.14 Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.

2.1.15 A reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.

2.1.16 A reference to one gender extends and applies to the other.

2.1.17 This document, and any clause within it, is not to be interpreted against the interests of a party merely because that party drafted or proposed it and relies upon it.

3- Status

3.1 Planning Agreement

3.1.1 This Agreement is a planning agreement:

(a) within the meaning set out in section 7.4 of the Act; and

(b) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3.1.2 Schedule 1 sets out the application of section 7.4 of the Act in this Agreement.

3.2 Application

This Agreement applies to both the Land and the Development.

3.3 Operation of Agreement

3.3.1 This Agreement operates from the date it is executed by both parties.

3.3.2 For administrative purposes

(a) The party who executes the Agreement last is to insert the date of execution on the cover page of the Agreement; or

(b) If the Agreement is executed in counterparts, the parties are to insert the date the counterparts are exchanged on the cover page of the Agreement.

4 Application of section 7.11, section 7.12 and division 7.1, subdivision 4

4.1 Application

4.1.1 The application of sections 7.11 and 7.12, and division 7.1, subdivision 4 of the Act to the Development are not excluded to the extent set out in Items X, X and X of Schedule X.

4.1.2 The Public Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act with respect to the Development to the extent set out in Item XX of Schedule X.

5 Development Value

5.1 Determination of Development Cost

5.1.1 Upon Completion of any Item of Works the Developer must within ten (10) Business Days notify the Council in writing of the Completion of that Item of Works in accordance with clause XX.

5.1.2 Upon receipt of written notification given under clause XX, the Council may, at the Developer's cost (to the extent that those costs are reasonable), appoint a Quantity Surveyor to independently assess the Development Cost of the relevant Item of Works. The Council shall procure that the Quantity Surveyor issue a certificate in favour of both the Council and the Developer as to the Development Cost of the relevant Item of Work.

5.1.3 The determination of the Quantity Surveyor as to the Development Cost of an Item of Works under this clause is conclusive and binding on the parties except in the case of manifest error, or fraud or misfeasance by the Quantity Surveyor.

5.1.4 The Developer shall, within fifteen (15) Business Days of receipt of an invoice in relation to the reasonable costs of the independent Quantity Surveyor pursuant to this clause, pay that invoice as directed by the Council.

5.2 Calculating Attributed Values

The parties acknowledge that where an Item of Works is identified in Schedule 6 as having an Attributed Value, the following mechanism will apply:

5.2.1 The Attributed Value for an Item of Works will be the Development Cost of that Item of Works or the Attributed Value of the Item of Works as identified at Schedule 6, whichever is the lesser amount.

5.2.2 In the event that a Quantity Surveyor is not appointed to determine the Development Cost in accordance with clause XX, the Attributed Value will be the Attributed Value of the Item of Works as identified at Schedule 6.

5.3 Credit for Attributed Values

5.3.1 Once determined in accordance with clause XX, the Attributed Value of an Item of Works will generate a credit equal to the amount of that Attributed Value.

5.3.2 The Developer, by letter in writing to the Council, may then elect to use any credit generated under this clause to reduce any:

(a) monetary section 7.11 or section 7.12 contribution required pursuant to a condition of Development Consent; or

(b) Monetary Contributions required to be made under this Agreement.

6 Registration of this Agreement

6.1 Registration

This Agreement must be registered on the title of the Land pursuant to section 7.6 of the Act.

6.2 Registration of Obligations of the Developer

6.2.1 The Developer must, within fifteen (15) Business Days of execution of this Agreement, do all things necessary to enable the registration of this Agreement to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land and lodging the executed instrument for registration with Land Registry Services.

6.2.2 The Developer must provide the Council with evidence that the Agreement has been registered on the title to the Land within fifteen (15) Business Days of registration

6.3 Removal from Title of the Land

6.3.1 The Council will promptly do all things necessary to allow the Developer to remove the registration of this Agreement from the title of the Land upon:

(a) the Developer having:

i. provided all Monetary Contributions;

ii. completed the Works;

iii. delivered the Public Benefits; and

iv. dedicated the Designated Land; or

(b) the termination of this Agreement.

6.3.2 The Developer must pay any reasonable costs incurred by the Council in undertaking that discharge.

7 Provision of Public Benefits

7.1 Designated Land

7.1.1 The Developer must dedicate the Designated Lands to the Council:

(a) in a clean and orderly state;

(b) free of any trusts, estates, interests, covenants and Encumbrances;

(c) in accordance with the timing specified in Schedule 6; and

(d) at no cost to the Council.

7.1.2 The Developer must meet all reasonable costs associated with the dedication of the Designated Lands in accordance with paragraph 7.1.1, including any reasonable costs incurred by the Council in relation to that dedication.

7.1.3 The Council must do all things reasonably necessary to enable the Developer to comply with paragraph 7.1.1.

7.2 Works

The Developer, at its cost, must:

7.2.1 if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the carrying out of the Works;

7.2.2 carry out and complete each Item of Works in accordance with the timing specified in Schedule 6; and

7.2.3 carry out and complete the Works:

(a) in accordance with the requirements of, or consents issued, by any Authority;

(b) in accordance with Schedule X (where applicable) and the reasonable requirements of the Council and any applicable Development Consent; and

(c) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards.

7.3 Protection of People and Property

The Developer is to use all reasonable endeavours in relation to the performance of its obligations under this Agreement to ensure that:

7.3.1 all necessary measures are taken to protect people and property;

7.3.2 unnecessary interference with the passage of people and vehicles is avoided; and

7.3.3 nuisances and unreasonable noise and disturbances are prevented.

7.4 Monetary Contributions

7.4.1 The Developer must make the Monetary Contributions to the Council in accordance with Schedule X.

7.4.2 The Monetary Contribution must be paid by deposit by means of electronic funds transfer into an account nominated by Council.

7.4.3 The Monetary Contribution will be taken to have been made when the Council receives the full, cleared amount of the contribution.

7.4.4 The Council must use the Monetary Contribution for the public purpose specified in Schedule X.

7.4.5 The monetary contribution is not a taxable supply for GST for the purpose of Clause XX of this Agreement.

7.5 Indexation of Monetary Contribution

7.5.1 The amount of each Monetary Contribution as required will be indexed annually quarterly from the date of this Agreement to the date of payment in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics.

8 Verification of Works

8.1.1 The Developer must, prior to commencing any Works for a Drainage Basin or Bioretention Basin and at its own cost, engage an independent third-party consultant (Consultant) with specialised expertise in the design, inspection and commissioning of Drainage Reserves and Basins.

8.1.2 Within seven (7) days of engaging the Consultant, the Developer must provide Council with the details of the Consultant, including the Consultant's name, and curriculum vitae setting out the Consultant's specialised expertise in the design, inspection and commissioning of water sensitive urban design devices.

8.1.3 The Developer may, from time to time and by notice in writing, notify the Council that the identity of the Consultant has changed, provided that the replacement Consultant satisfies the specialised expertise requirements in clause XX.

8.1.4 When issuing a Completion Notice in accordance with clause XX, the Developer must provide the Council with independent written verification from the Consultant that the relevant Works have been completed:

(a) in accordance with this Agreement and any applicable consents, approvals or permits required by a relevant Authority including the Council;

(b) in accordance with the scope and specifications for the Works as set out in Schedule X, or as set out in any variation approved in accordance with clause XX, or any amendment to this Agreement; and

(c) in accordance with industry best practice.

9 Commencement of Works

9.1 Notice of Commencement

9.1.1 Prior to the commencement of construction works in connection with the Development Consent and this Agreement, the Developer is to notify the Council that it proposes to do so (Commencement Notice).

9.1.2 The Developer must include in the Commencement Notice the projected works schedule, milestone dates and the anticipated completion date of each the Item of Works.

9.1.3 The Developer must include contact details of the daily site supervisor and the main Project Manager in the Commencement Notice.

10 Completion of Works

10.1 Issue of Completion Notice

10.1.1 When the Developer is of the opinion that an Item of Works has been completed, including, in respect of the Bioretention Basin, that it is in the Final Basin State, the Developer must notify the Council in writing. The notice must specify and include-

(a) a description of the Item of Works completed;

(b) a full Works as Executed Plan package of information in accordance with Schedule 5;

(d) copies of all inspection and testing results undertaken;

(e) where required the written verification of the Consultant procured under clause X;

(f) where applicable, the certification that the design requirements of any Australian Standards have been met;

(g) a Development cost report prepared by a Registered Surveyor that provides a detailed breakdown of the costs of the Item of Work; and

(h) any other supporting documentation relied upon to verify completion.

The Developer must provide and submit the above documentation with the completion notice as one single package of information for the Works Completed (Completion Notice).

10.1.2 The Developer either

(a) will procure a non-exclusive licence for the Council to use, being if the copyright owner in the Works as Executed Plan, assigns the copyright in the Works as Executed Plan for the purposes of this Agreement, to the Council free of cost to the Council; or

(b) If the Developer is not the copyright owner of the Work as Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works as Executed Plan to the Council at the Developers expense and prior to the submission of a Completion Notice.

10.1.4 The Council may require, at its absolute discretion, the provision of an Occupation Certificate, Subdivision Certificate or Compliance Certificate to accompany the Completion Notice in order to accept.

10.2 Notice of Completion

The Council must provide notice in writing to the Developer within fifteen (15) Business Days of receipt of a Completion Notice that the relevant Item of Works the subject of that Completion Notice:

10.2.1 has been Completed (Acceptance of Completion Notice); or

10.2.2 identifying any requests additional information that the Council, acting reasonably, considers necessary to assess the Item of Works for Completion.

10.2.3 has not been Completed, in which case the notice must also detail:

(a) those aspects of the Item of Works which have not been Completed; and

(b) the work the Council, acting reasonably and conformably with the requirements of the Development Consent for the Development, requires the Developer to carry out in order to rectify those deficiencies.

10.2.4 The Council may carry out an Inspection to inform whether or not an Item of Works has been Completed.

10.3 Date of Completion

The Date of Completion of an Item of Works is the date recorded in the Acceptance of Completion Notice issued under 10.2.1.

10.4 Effect of Council Notice

10.4.1 Where the Council serves notice on the Developer pursuant to clause XX, the Developer must:

(a) rectify the identified deficiencies in accordance with that notice within a reasonable time (not being less than ten (10) Business Days from the date it is issued by the Council); or

(b) serve a notice on the Council that it disputes the matters set out in the notice.

10.4.2 Where the Developer:

(a) serves notice on the Council in accordance with paragraph 10.5.110.2.4(b) the dispute resolution provisions of this Agreement apply; or

(b) rectifies the Works in accordance with paragraph 10.4.110.5.1(a) it must serve upon the Council a new Completion Notice for the Item of Works. (New Completion Notice).

10.5 New Completion Notice

(a) The provisions of clauses XX to XX (inclusive) apply to any New Completion Notice issued by the Developer.

(b) Without limitation to clause X, the Consultant must verify that the relevant Works the subject of rectification pursuant to a Notice issued by the Council under clause XX have been completed in accordance with the requirements of that notice.

11 Defects liability

11.1 Defects Notice

11.1.1 Where any Item of Works is Complete, but that item contains a minor Defect that the Council agrees can be rectified during the Defects Liability Period, or the Council becomes aware of a Defect after serving an

Acceptance of Completion Notice, the Council may issue a notice to the Developer (Defects Notice) during the relevant Defects Liability concerning that Item of Works.

11.1.2 A Defects Notice must contain the following information:

(a) the nature and extent of the Defect;

(b) the work the Council, acting reasonably, requires the Developer to carry out in order to rectify the Defect; and

(c) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than ten (10) Business Days).

11.2 Developer to Rectify Defects

11.2.1 The Developer must rectify the Defect contained within a Defects Notice prior to the date specified in the Defects Notice, unless otherwise agreed between the parties.

11.2.2 The Developer must follow the procedure set out in clause XX in respect of the Completion of the rectification of any Defect as if a reference in that clause to an Item of Works is a reference to the relevant Defect.

11.3 Inspection

11.3.1 The Developer shall permit the Council to enter the Land, upon giving reasonable no less than 1 Business Day prior notice, in order for Council to Council may undertake an audit, inspection or testing of the works.

11.3.2 In undertaking any inspection, the Council must take reasonable steps to avoid doing so would not unreasonably obstructing, nor compromising the safety of, the Developer carrying out works for the Development or the Works.

11.3.3 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Works.

11.4 Right of Council to Step-in

Where the Developer has failed to comply with a Defects Notice. The Council may, at its absolute discretion, enter upon the Land for the purpose of rectifying a Defect set out in the Defects Notice, but only after giving the Developer thirty (30) Business days' written notice of its intention to do so and provided the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.

11.5 Consequence of Step-in

If the Council elects to exercise the step-in rights granted to it under clause 11.5 then:

11.5.1 The Council may:

(a) enter upon any part of the Land reasonably required to exercise those step-in rights; and

(b) rectify the relevant Defects in accordance with the Defects Notice in a reasonable and workmanlike manner;

11.5.2 The Developer must not impede or interfere with the Council in exercising those rights; and

11.5.3 The Council may claim any costs, including legal costs, reasonably incurred by it in doing so from the Developer in accordance with clause XX.

12 Maintenance of Reserves and Basins

12.1 Maintenance Obligations

12.1.1 The Developer must satisfy the Maintenance Obligations:

(a) in the manner and extent described in Schedule X (Table X, Item XX); and

(b) for the Maintenance Liability Period at no cost to the Council.

12.1.2 The Developer must keep a written record of maintenance undertaken of the Drainage Reserves and Basins and provide a copy to the Council

(a) during the Maintenance Liability Period, upon request; and

(b) within 14 days of the end of the Maintenance Liability Period.

12.2 Notice requiring Maintenance Obligations to be carried out

12.2.1 If the Council, acting reasonably, is not satisfied that the Maintenance Obligations have been carried out in accordance with clause 12.1 with respect to one or more of the Drainage Reserves and Basins, the Council may, by notice in writing:

(a) direct the Developer to undertake the required maintenance; and

(b) specify a time by which the Maintenance Obligation is required, acting reasonably.

12.2.2 Upon receipt of a notice from the Council in accordance with clause XX, the Developer must, within a reasonable period:

(a) carry out the Maintenance Obligation in accordance with that notice; and

(b) provide the Council with written confirmation that the Maintenance Obligation has been satisfied.

13 Warranties and Indemnities

13.1 Warranties

The Developer warrants to the Council that:

13.1.1 it is able to fully comply with its obligations under this Agreement;

13.1.2 it has full capacity to enter into this Agreement; and

13.1.3 there is no legal impediment to it entering into this Agreement, or performing the obligations imposed under it.

13.2 Indemnity

Without limiting any other indemnities provided in this Agreement, the Developer indemnifies the Council in respect of any Claim that may arise as a result of the performance, rectification, maintenance and use of the Works or any Claim that may arise as a result of any non-compliance with this Agreement by the Developer, but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of the Council or a breach of this Agreement by the Council.

14 Contamination

14.1 Definitions

For the purpose of this clause:

Contamination has the meaning given to that word in the Contaminated Land Management Act 1997 (NSW).

Contaminated means subject to Contamination.

Environment means all components of the earth, including:

(a) land, air and water;

(b) any layer of the atmosphere;

(c) any organic or inorganic matter;

(d) any living organism; and

(e) natural or man-made or modified features or structures,

(f) and includes ecosystems and all elements of the biosphere.

Environmental Law means all laws relating to the protection of or prevention of harm to the Environment including but not limited to any law relating to the use of land, planning, environmental assessment, the environmental or historic heritage, water, water catchments, pollution of air, soil, ground water or surface water, noise, soil, chemicals, pesticides, hazardous goods, building regulation, occupation of buildings, public health or safety, occupational health and safety, environmental hazard, any aspect of protection of the environment or the enforcement or administration of any of those laws (whether those laws arise under statute or the common law or pursuant to any permit, licence, approval, notice, decree, order or directive of any governmental agency or otherwise).

Exacerbate, Exacerbated or Exacerbation means in relation to Contamination, any conduct which:

(a) disperses or increases the areas of that Contamination;

(b) digs up, brings to the surface or otherwise disturbs that Contamination; or

(c) otherwise makes the remediation of that Contamination necessary,

14.2 Warranty and Indemnity

The Developer warrants that:

14.2.1 except as disclosed in Schedule 7 of this Agreement, the Designated Land is not Contaminated; and

14.2.2 the Developer indemnifies and must keep indemnified the Council against all liability for and associated with all Contamination present in, on or under the Designated Land as at the date of dedication or transfer of the Designated Land to the Council in accordance with this Agreement, except to the extent caused or contributed to by negligent acts by or omissions of the Council or a breach of this Agreement by the Council.

14.3 Contamination caused by Developer

14.3.1 If Contamination in, on or under the Land or land which is outside the boundary of the Land is caused or contributed to by the Developer or or as a direct consequence of the Works being undertaken or carried out by the Developer under this Agreement, the Developer will, at its own cost and within a reasonable time, remediate the Contamination, to a standard suitable for the current and proposed future use of that land.

14.3.2 Where Contamination is caused or contributed to by the Developer as a direct consequence of the Works being undertaken or carried out by the Developer under this Agreement, and that Contamination is in, on or under any land that is owned or occupied by the Council, or under the management and control of the Council, the Developer indemnifies and must keep indemnified the Council against all liability for and associated with all such Contamination.

14.3.3 This clause 14.3 does not apply to any Contamination caused or contributed to or exacerbated by the Council, its authorised persons or its invitees.

15 Termination of this Agreement

15.1 Termination

This Agreement will terminate upon:

(a) the Developer satisfying all of its obligations under the Agreement, including any obligations which arise in response to a default;

(b) the Development Consent for the Development being surrendered before the Development is physically commenced; or

(c) the Development Consent for the Development lapsing pursuant to the Act; or

(d) the Development Consent being declared by a Court to be invalid and set aside.

15.2 Effect of termination

15.2.1 Upon the determination of this Agreement the Council will do all things necessary to allow the Developer to remove this Agreement from the title of the whole or any part of the Land as quickly as possible. For the avoidance of doubt,

15.2.2 This clause does not require the Council to repay, undo or return any Public Benefit provided it prior to the date of termination.

15.2.3 This clause continues to apply after expiration or termination of this Agreement.

16 Prohibition on Assignment

16.1 The Developer must not Assign its interest in the Land, (other than in respect of a Final Lota single Residential Lot approved pursuant to a Development Consent and created by the registration of a plan of subdivision), or its rights or obligations under this Agreement, unless:

16.1.1 the Council gives prior written consents to the Assignment; and

16.1.2 the proposed assignee enters into an agreement to the reasonable satisfaction of the Council under which the assignee agrees to be bound by the terms of this Agreement with respect to the relevant rights or obligations,

16.2 Where this Deed is to be assigned or novated to a person or entity who proposes to enter into this Deed as the trustee of a trust (Trustee),

16.2.1 the Trustee warrants that:

(a) it is the sole trustee of the trust;

(b) it has full and valid power and authority to enter into this Deed and perform the obligations under it on behalf of the trust;

(c) it has entered into this Deed for the proper administration of the trust; and

(d) all necessary resolutions, consents, approvals and procedures have been obtained or duly satisfied to enter into this Deed and perform the obligations under it; and

(e) it is entitled to be indemnified out of the property of the trust pursuant to the Trust Deed for all liabilities incurred by it under this Deed.

16.2.2 Any liability of the Trustee arising under or in connection with this Deed is not limited by the extent to which the Trustee can be, and is in fact, satisfied out of property of the trust.

17 Enforcement of land dedication - Compulsory Acquisition

17.1 The Developer consents to the compulsory acquisition of the Designated Land:

17.1.1 in accordance with the Acquisition Act; and

17.1.2 on the terms set out in this clause 17.

17.2 The Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed a Default Event with respect to the dedication of that land under this Agreement.

17.3 If the Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:

17.3.1 The Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is $1.00; and

17.3.2 The Council must complete that acquisition within twelve (12) months of the relevant Default Event.

17.4 The parties agree that the provisions of this clause 17 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of section 30 of the Acquisition Act.

18 Security

18.1 Delivery to Council of Bank Guarantee

The Developer must deliver to Council Bank Guarantees:

(a) in accordance with the timing set out in Table 2 of Schedule 6; and

(b) for an amount equal to the sum of the Security Value for the relevant Item of Works or obligation as set out in Table 2 of Schedule 6; and

(b) for each Item, security in two tranches, with one equal to the amount required to be provided as Security for Defects (Defects Bank Guarantee).

18.2 Value of Security

18.2.1 The Security Value shall has been calculated to be 75% of the Attributed value of the Item of Works or obligations.

The Security Value shall be indexed annually quarterly from at the date time of this Agreement to the date it is delivery of the relevant Bank Guarantee payment provided in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics indexation formula set out in clause 7.5.

18.3 Timing of Security Payments

18.3.1 Security Values that are required to be paid prior to the release of a Construction Certificate, Subdivision Works or Subdivision Certificate may only be paid once the relevant application has been lodged for assessment, and no more than ten (10) Business Days before the issue of the relevant Certificate.

18.3.2 The Council reserves the right to decline or return a payment if that payment is made prematurely.

18.3.3 Where there is no requirement for a Part 6 Certificate to be issued the Security Values must be paid no less than ten (10) Business Days before works commence on site.

18.4 Council may call on Bank Guarantee

18.4.1 If the Developer does not comply with a requirement under this Deed, the Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within twenty (20) Business Days from the date of that notice.

18.4.2 If the Developer fails to comply with a notice issued under paragraph 18.3.1 above, the Council, without limiting any other avenues available to it, may call on the relevant Bank Guarantee to the extent necessary for the Council to rectify the relevant default of the Developer.

18.4.3 The Council may recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantees accessed by it and the costs for which the Developer is liable under this clause.

18.4.4 Within two (2) Business Days of the Council calling up the Bank Guarantee, the Council must notify the Developer of that call-up.

18.5 Top Up of Bank Guarantee

Within thirty (30) Business Days of being requested to do so by the Council, the Developer must ensure that the amount secured by any Bank Guarantee is returned to the relevant level set out in clause 18.1.

18.6 Security during Defects Liability Period

18.5.1 Within ten (10) Business Days after the completion of an Item of Works and the commencement of the Defects Liability Period, the Council must release and return to the Developer any Bank Guarantee, held by it with respect to the relevant Item of Works other than the Defects Bank Guarantee (which is to be retained for the Defects Liability Period).

18.7 Return of Bank Guarantee

18.7.1 The Council must return the remaining Bank Guarantees (if any) to the Developer within ten (10) Business Days from:

(a) the expiration of the Defects Liability Period for the last Item of Works that is Completed; or

(b) if this Agreement is otherwise terminated pursuant to clause XX, the date on which it is terminated.

18.7.2 This clause XX continues to apply after expiration or termination of this Agreement.

18.8 Bank Guarantee Not Required for Certain Public Benefits

A Bank Guarantee under this clause 18 is not required to be provided with respect to the Attributed Value of the Designated Lands.

19 Dispute Resolution

19.1 Notice of Dispute

19.1.1 If a dispute between the parties arises in connection with this Agreement or its subject matter (Dispute), then either party (First Party) must give to the other (Second Party) a notice which:

(a) is in writing;

(b) adequately identifies and provides details of the Dispute;

(c) stipulates what the First Party believes will resolve the Dispute; and

(d) designates its representative (Representative) with the necessary authority to negotiate and resolve the Dispute.

19.1.2 The Second Party must, within seven (7) Business Days of service of the notice of a Dispute, provide a notice to the First Party designating as its Representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the parties being together, the Representatives).

19.2 Conduct Pending Resolution

The parties must continue to perform their respective obligations under this Agreement if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

19.3 Further Steps Required before Proceedings

Subject to clause 19.12 and except as otherwise expressly provided in this Agreement, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 19.5 or determination by an expert under clause 19.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within seven (7) Business Days of the date a notice under clause 19.1.2 is served.

19.4 Disputes for Mediation or Expert Determination

If the Representatives have not been able to resolve the Dispute, then the parties must seek to within seven (7) Business Days to either refer the matter to mediation under clause 19.5 or expert resolution under clause 19.6.

19.5 Disputes for Mediation

19.5.1 If the parties agree in accordance with clause XX to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and or, if the parties cannot agree within seven (7) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.

19.5.2 If the mediation referred to in paragraph XX has not resulted in settlement of the Dispute and has been terminated, clause XX applies,

19.6 Choice of Expert

19.6.1 If the Dispute is to be determined by expert determination, this clause 19.6 applies.

19.6.2 The Dispute must be determined by an independent expert in the relevant field, who is:

(a) agreed between and appointed jointly by the parties; or

(b) in the absence of agreement as to the identity of the independent expert within seven (7) Business Days (or such longer time as may be agreed between the parties), appointed by the President of the Law Society of New South Wales for the time being.

19.6.3 If the parties fail to agree as to the relevant field of the expert within seven (7) Business Days, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.

19.6.4 The parties must take reasonable steps to ensure that the expert appointed to determine a Dispute:

(a) has a technical understanding of the technical issues in dispute;

(b) does not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to reasonably construe this greater understanding as a bias; and

(c) is given a reasonable opportunity to inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.

19.6.5 The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

19.7 Directions to and from Expert

19.7.1 The parties are to direct any independent expert appointed to determine a Dispute as follows:

(a) In reaching a determination in respect of a dispute under clause XX, the independent expert must give effect to the intent of the parties entering into this Agreement and the purposes of this Agreement.

(b) The expert must:

i. act as an expert and not as an arbitrator;

ii. not accept verbal submissions unless both parties are present;

iii. on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;

iv. take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;

v. not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);

vi. issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party fourteen (14) Business Days to make further submissions;

vii. issue a final certificate stating the expert's determination (together with written reasons); and

viii. act with expedition with a view to issuing the final certificate as soon as practicable.

19.7.2 The parties must, within a reasonable period, give the expert:

(a) a short statement of facts;

(b) a description of the Dispute; and

(c) any other relevant documents, records or information which the expert requests and which are in the possession of the parties or could reasonably be obtained by the parties.

19.8 Expert May Convene Meetings

19.8.1 The parties must direct the expert to hold a meeting with all of the parties present to discuss the Dispute (Meeting).

19.8.2 The parties agree that the meeting shall be conducted in a manner which the expert considers appropriate.

19.8.119.8.3 The parties agree that the Meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

19.8.219.8.4 The parties agree that a Meeting is not a hearing and is not an arbitration.

19.9 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

19.10 Final Determination of Expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

19.11 Other Courses of Action

If:

19.11.1 the parties cannot agree in accordance with clause 19.4 whether to refer the matter to mediation or determination by an expert; or

19.11.2 the mediation referred to in clause 19.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within seven (7) Business Days after termination of the mediation;

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

19.12 Remedies Available under the Act

This clause 19 does not operate to limit the availability of any remedies available to the Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

19.13 Urgent Relief

This clause 19 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement.

20 Position of the Council

20.1 Consent Authority

The parties acknowledge that the Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

20.2 Agreement does not Fetter Discretion

This Agreement is not intended to operate to fetter:

20.2.1 the power of the Council to make any Law; or

20.2.2 the exercise by the Council of any statutory power or discretion (Discretion).

20.3 Severance of Provisions

20.3.1 No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion.

20.3.2 If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

(a) that they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 20 is substantially satisfied;

(b) that, in the event that clause 20.3.1(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and

(c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

20.3.3 Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this Agreement contracted out of a provision or exercised a Discretion under this Agreement, then to the extent of this Agreement is not to be taken to be inconsistent with the Law.

20.4 No Obligations

Nothing in this Agreement will be deemed to impose any obligation on the Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

21 Confidentiality

21.1 Agreement not Confidential

The terms of this Agreement are not confidential, and this Agreement may be treated as a public document and exhibited or reported without restriction by any party.

22 GST

22.1 Definitions

In this clause:

Taxable Supply, GST, Tax Invoice and Input Tax Credit have the same meaning given to them in GST Law.

22.2 Non-monetary Supplies

22.2.1 The parties agree that any non-monetary supplies made by one party to the other pursuant to this Agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.

22.2.2 In the event that one party reasonably believes that the non-monetary supply it makes to the other is a Taxable Supply then the parties agree to negotiate in good faith to agree to the GST inclusive market value of that Taxable Supply as follows:

(a) the party making the Taxable Supply will issue a Tax Invoice to the other as soon as practicable after agreeing to the GST inclusive market value and will disclose the amount of GST included in the GST inclusive market value.

(b) the recipient of the Taxable Supply will pay to the other party the amount of the included GST within fifteen (15) days of receiving the Tax Invoice.

22.2.3 In the event that both parties reasonably believe that each make a non-monetary Taxable Supply to the other, any GST payable by one party to the other will be off-set against each other and any net difference will be paid by the party with the greater obligation.

22.3 Supply Expressed in Terms of Money

If any party reasonably believes that it is liable to pay GST on a supply expressed in terms of money (or where the consideration for the supply is expressed in terms of money) and made to the other party under this Agreement and the supply was not expressed to include GST, then:

22.3.1 the recipient of the supply must pay an amount equal to the GST on that supply to the other party;

22.3.2 the party making the supply will issue a Tax Invoice to the other party; and

22.3.3 the recipient of the supply will pay the amount of the GST to the supplier within fifteen (15) days of receiving the Tax Invoice.

22.4 Expenses and Costs Incurred

If any expenses or costs incurred by one party are required to be reimbursed by the other party under this Agreement, then the amount of the reimbursement will be calculated as follows:

22.4.1 The amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.

22.4.2 This amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.

22.4.3 The party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

22.5 Survival of Clause

This clause 22 continues to apply after the expiration or termination of this Agreement.

23 Access to Land

23.1 Application of Clause

This clause applies if the Developer accesses, uses and/or occupies any land owned by the Council in performing its obligations or exercising its rights under this Agreement (Necessary Access).

23.2 Terms of Licence

The terms of Schedule 3 apply to any Necessary Access.

24 Council Costs

24.1 Legal Costs

The Developer shall bear its own costs and those of the Council in relation to the preparation, negotiation, execution and registration of this Agreement and any document related required to give effect to this Agreement.

24.2 Ongoing costs

(a) The Developer shall bear its own costs and those of the Council in relation to the ongoing management and administration of this Agreement and any document related to this Agreement

The Developer shall bear the reasonable, substantiated costs of the Council in relation to the ongoing management and administration of this Agreement up to $1500 per year.

25 Administrative Provisions

25.1 Notices

25.1.1 Any notice, consent or other communication under this Agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

(a) delivered to that person's address;

(b) sent by pre-paid express mail to that person's address; or

(c) sent by email to that person's email address.

25.1.2 A notice given to a person in accordance with this clause is treated as having been given and received:

(a) if delivered to a person's address on a Business Day, then the Business Day on which it is so delivered, otherwise on the next Business Day;

(b) if sent by pre-paid express mail, on the third Business Day after posting; and

(c) if sent by email to a person's email address and a confirmation of receipt can be retrieved on a Business Day, and the sender does not receive either:

i. a delivery failure message; nor

ii. an automated message indicating that the email is unlikely to have been received or seen by the recipient because the recipient cannot access or is not regularly reviewing emails, then the Business Day on which it is so sent, otherwise on the next Business Day.

25.1.3 For the purpose of this clause the address of a party is the address set out in this Agreement or another address of which that party may from time to time give notice to each other party.

25.1.4 Council Notice Details

Upper Lachlan Shire Council

Attention: [COUNCIL TO INSERT]

Position: [COUNCIL TO INSERT]

Address: [COUNCIL TO INSERT]

Email: [COUNCIL TO INSERT]

CC email: [COUNCIL TO INSERT]

Reference: [COUNCIL TO INSERT]

25.1.5 Developer notice details

XXX XXXX

Attention: XXXX

Address: XXX

XXXX

Email: XXXXX

25.2 Entire Agreement

This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

25.3 Waiver

25.3.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right in compliance with this Agreement. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

25.3.2 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the party to whom the waiver is given.

25.3.3 A waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach in any other circumstance or instance.

25.4 Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

25.5 Unenforceability

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible while still retaining the intent of the provision, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

25.6 Governing Law

The law in force in the State of New South Wales governs this Agreement. The parties:

25.6.1 submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear an appeal from those courts in respect of any proceedings in connection with this Agreement; and

25.6.2 may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of forum non conveniens.

25.7 Review Requirements

25.7.1 The Parties agree to review this Agreement if either party believes that a change in circumstance has occurred or will occur that will affect the operation and carrying out of this Agreement.

25.7.2 Review of this Agreement is required if any Legislation is introduced or changed to the effect that it would limit, stop, substantially change or otherwise hinder the operation or implementation of this Agreement in the opinion of either party.

25.7.3 The parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement should reasonable and necessary amendments be required.

25.7.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to Legislation, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

25.7.5 A failure by a party to agree to take action requested by the other party as a consequence of a review of this Agreement is not a dispute for the purposes of the dispute resolution provisions of this Agreement.

25.7.6 A party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review under this clause 25.8.

25.8 Further Agreements

This Agreement does not prevent further agreements between the parties that are not inconsistent with this Agreement.

25.9 Variations

25.9.1 The design or specification of Works may be varied by agreement in writing between the Parties without the need to amend this Agreement.

25.9.2 The Developer may, by written notice to the Council, propose any variation to design or specifications of any Works (Works Variation Notice).

25.9.3 The Council must, within ten (10) Business Days of receipt of a Works Variation Notice respond in writing, by either:

(a) requesting any additional information that the Council, acting reasonably, considers necessary to review, consider and make an informed decision in relation to the Works Variation Notice; or

(b) agreeing to any or all variations proposed in the Works Variation Notice; or

(c) proposing an alternate variation to any or all variations proposed in the Works Variation Notice (Alternate Variation); or

(d) refusing any or all variations proposed in the Works Variation Notice if that variation(s) would, in the Council's opinion, acting reasonably, materially adversely affect the public benefit being provided under this Agreement.

25.9.4 The Developer must within ten (10) Business Days after receiving a notice of an Alternate Variation, notify the Council in writing whether the Developer:

(a) agrees to the Alternate Variation, in which case the Alternate Variation is taken to be agreed for the purposes of clause 25.10.1; or

(b) does not agree to the Alternate Variation, in which case the Council must issue a further response to the Developer in accordance with either of clauses XXX.

25.10 Surrender of Right of Appeal

25.10.1 The Developer is not to commence or maintain any proceedings in any court, tribunal or similar appealing against or questioning the validity of this Agreement or any obligation imposed on the Developer by this Agreement.

25.10.2 For the avoidance of doubt, this clause 25.11 does not prevent the Developer from commencing or maintaining any proceedings in relation to:

(a) an alleged breach by the Council of its obligations under this Agreement;

(b) an alleged frustration of this Agreement;

(c) any condition of the Development Consent, provided that such condition does not require the Developer to comply with this Agreement; or

(d) the determination of any application to modify the Development Consent or carry out any other development on the Land.

25.11 Notations under section 10.7(5) of the Act

The Council may, at its absolute discretion, make a notation on a planning certificate issued under section 10.7(5) of the Act detailing the application or effect that this Agreement has on the Land.

25.12 Issue of Part 6 Certificates

25.13.1 Where this Agreement identifies requirements which must be met before the issuance of a Construction Certificate, Subdivision Works, or Subdivision Certificate or Occupation Certificate then those requirements operate as a restriction on the issue of the relevant certificate for the purpose of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

Signing Page

Executed by the parties as a deed:

Dated

Executed by **XXXX (XXXX** in accordance with s.127(1) of the *Corporations Act 2001*:)
)
)
)

Signature of Director	Signature of Director or Company Secretary
Print full name	Print full name

Signed, sealed and delivered for **UPPER LACHLAN SHIRE COUNCIL (ABN 81 011 241 552)** by its authorised delegate pursuant to s.377 of the *Local Government Act 1993* (NSW), in the presence of:)
)
)
)
)

Signature of witness	Signature of delegate

Name	Name of delegate
Address of witness	Position of delegate

Schedule 1. Requirements under section 7.4 of the Act

ITEM	REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
1.	**Planning instrument and/or Development Application –** (Section 7.4(1)) The Developer has:	
	(a) sought a change to an environmental planning instrument.	
	(b) made, or proposes to make, a Development Application.	
	(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	
2.	**Description of land to which this Agreement applies –** (Section 7.4(3)(a))	
3.	**Description of development to which this Agreement applies –** (Section 7.4(3)(b))	
4.	**Nature, extent, timing and manner of provision to be made by the Developer –** (Section 7.4(3)(c))	
5.	**Application of section 7.11 of the Act –** (Section 7.4(3)(d))	
6.	**Applicability of section 7.12 of the Act –** (Section 7.4(3)(d))	
7.	**Applicability of division 7.1, subdivision 4 of the Act –** (Section 7.4(3)(d))	
8.	**Consideration of benefits under this Agreement if section 7.11 applies –** (Section 7.4(3)(e))	
9.	**Mechanism for Dispute resolution –** (Section 7.4(3)(f))	
10.	**Enforcement of this Agreement –** (Section 7.4(3)(g))	
11.	**No obligation to grant consent or exercise functions –** (Section 7.4(9))	

Schedule 2. Contract Details

ITEM		DESCRIPTION
1.	Land	
2.	Development	
3.	Development Application	
4.	Attributed Value (clause)	
5.	Defects Liability Period (clause)	
6.	Maintenance Liability Period (clause)	
7.	Security Amounts (clause)	

Schedule 3. Terms of Licence

1 Licence

1.1 The Council grants the Developer a fee- free licence to access the Designated Land for the purpose of carrying out the Maintenance Obligations under the Agreement.

2 Licence Term

2.1 The Licence commences on the date the Designated Land is transferred to the Council.

2.2 The Licence terminates the day after the Maintenance Liability Period ends.

3 Notice

3.1 Before entering the Designated Land under this Licence, the Developer must give the Council no less than 2 Business Days prior notice of its intention do so.

4 General Obligations

4.1 The Developer must

(a) avoid damage to the Designated Land and people and property on the Land

(b) take all reasonable measures to minimise disturbance and interference to the Council and any other people on the Land, any property on the Land and any vehicles on the Land;

(c) keep the parts of the Land accessed and used by the Developer clean, tidy and safe

(d) leave the Land in substantially the same condition as it was prior to entry.

5 Personal Rights

5.1 The Licence is personal to the Developer.

5.2 The Developer may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Council.

5.3 The Council may refuse the granting of consent under clause 2.1.2) without reason and at its absolute discretion.

6 Leasehold Interest

6.1 This Licence does not grant to the Developer a leasehold interest in the Land.

6.2 The parties agree that:

(a) the Licence does not confer exclusive possession of the Land on the Developer;

(b) the Developer may not exclude the Council, its officers, employees and invitees from:

i. entry onto the Land; and/or

ii. the performance of any works on the Land;

provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the activities being carried out on the Land by the Developer;

(c) the Developer does not have any right to quiet enjoyment of the Land; and

(d) the Licence does not confer any interests or rights in, or over, the Land except for those interests or rights expressly given ; and

(e) the Developer will not at any time seek to enforce an interest in the Land in competition with the interest held by the Council, except to the extent that enforcement would be consistent with this Licence.

7 Compliance with authorities

7.1 No Warranty as to Suitability for Use

The Licensee Developer acknowledges and agrees that the Licensor Council has not made any representation or warranty to the Licensee Developer regarding the suitability of the Land for the purposes of the LicenseeDeveloper.

7.2 Compliance with the Terms of the Consents

The Licensee Developer must comply with the requirements of the Development Consentall Authorities and the Agreement in relation to its access to the Land and the conduct of any activities on it by the LicenseeDeveloper.

7.3 Compliance with Directions from Authorities

The Licensee Developer must comply with all notices, directions or, orders or other requests made or served upon itself by or the Licensor Council or by an Authority and relating which arise from to the conduct of any activities on the Land by the LicenseeDeveloper.

7.4 Obtaining Further Consents

(a) If the Licensee Developer requires further consents to conduct activities on the Land it must:

(i) make such applications itself; and

(ii) bear all costs incurred by it in relation to obtaining the relevant consent.

(b) The Council agrees that it will, where required, sign all authorities reasonably required by the Licensee Developer to make any application to any Authority.

7.5 Making good

(a) The Licensee Developer must make good all damaged occasioned to the Lland and any assets on that Lland that are damaged in any way (other than fair wear and tear) as a result of the LicenseeDeveloper in obtaining accessing to and in the undertaking of any the Maintenance W works on the Lland.

(b) The LicensoreeDeveloper agrees that it will, where required, make good all damage within ten (10) Business Days of the damage occurring, or such longer period as may be agreed between the parties, acting reasonably, having regard to the nature of the steps required to make good that damage.

8 Limitation of the Council’s liability

8.1 Insurances

(a) The Developer must effect and keep current and in force the following policies of insurance for the term of this Licence:

(b) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Council in an amount of $20,000,000 for any one occurrence in respect of any liability for:

i. personal injury or death of any person; and

ii. loss or damage to property;

(c) Workers compensation insurance under the Workers Compensation Act 1987 covering all persons employed or deemed to be employed by the Licensee Developer in connection with the conduct of the activities on the Land by the Developer;

(d) A comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Developer; and

(d) A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Developer.

(e) The policies referred to in paragraphs 4.1.1(a), 4.1.1(c) and 4.1.1(d) must note the interest of the Council as principal.

8.2 Inspection of Insurance

(a) The Developer must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.

(b) The Council may carry out random audits to verify insurances held by the Developer. The Developer will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Council.

8.3 Cancellation of Insurance

If any policy is cancelled either by the Developer or the insurer the Developer must

(a) notify the Council immediately;

(b) leave, secure and not access the Land until replacement insurance is in force; and

(c) obtain replacement insurance within 3 Business Days.

8.4 Risk

The Developer uses and occupies the Land at its own risk.

8.5 Indemnity

The Developer indemnifies the Council against any Claim made in respect of the Developer's use and/or occupation of the Land, except to the extent that Claim relates to or arises from the negligent conduct or omissions of the Council.

Schedule 4. Inspection & Testing Requirements

1 Inspections of Works

1.1 Erosion and Sediment Control and Site Set Up

(a) Implementation of all required erosion and sediment control measures before commencement of construction.

(b) All required site set up works required to satisfy all prior to commencement conditions.

1.2 Drainage

(a) Trench excavated, bedding material placed, and pipes/conduits (showing pipe class) laid prior to backfilling and Non-cohesive granular backfilling material up to haunch.

(b) Filter material placed in subsoil drains prior to backfilling.

(c) Pit walls, wing walls and head walls with reinforcement and place prior to casting.

(d) Connection to existing system prior to backfilling.

(e) Channel/watercourse tail out works after construction.

1.3 Pavement Construction

(a) Prior to works commencing approval of the material used in road pavements shall be obtained from Council, including the source of the material and most recent material testing.

(b) Sub-grade proof roll test (a visual and deflection check by fully laden water cart with capacity of 10,000 litres of water) or in accordance with T198.

(c) Sub-base proof roll test at kerb alignment (a visual check and roller test with 10t smooth drum roller) or in accordance with T198.

(d) Base course Benkelman Bean test carried out by NATA registered Geotechnical Engineer at 10m intervals.

1.4 Wearing Surface

(a) Application of the wearing surface shall not occur without the approval of the Council. The following shall be submitted to Council to demonstrate compliance with Councils Engineering specification prior to approval to seal.

(b) Inspection sampling and testing plans.

(c) Survey conformance report for subgrade, subbase and base prior to the proof roll inspection.

(d) Materials test report for each layer of pavement i.e. subgrade, subbase, base (CBR test, Compaction test etc) prior to the proof roll inspection

(e) Benkelman Beam Test results.

(f) Visual inspection of the initial seal/primer seal prior to application of the final wearing surface.

(g) Core Drills of the wearing surface will be undertaken by Council.

1.5 Footpath, Off-road Cycleway and Shared Way Works

(a) Sub-grade roller test (1.8t smooth drum roller).

(b) Concrete footpaths, cycleways, shared ways and pathways formed, set out with chaired reinforcement in place, movement joints etc prior to placement of concrete.

1.6 On-site Detention System (OSD)

(a) Sub-grade roller test (1.8t smooth drum roller).

(b) Steel and formwork for tank/pit prior to placement of concrete.

(c) Pipes upstream/downstream of tank/pit prior to backfilling.

1.7 Installation of Stormwater Quality Devices

(a) Prior to works commencing approval of the material used in stormwater quality devices such as stormwater bio filtration systems shall be obtained from Council, including the source of the material and most recent material testing.

(b) The reduced base level of the basin upon which the drainage and bio filtration system is to be constructed, must be demonstrated on site that the base is either level or has been provided with the required falls. Certification from a registered surveyor is required.

(c) Inspection of each layer in the stormwater quality device prior to placement of the next layer.

(d) Prior to the planting of any plants, approval shall be obtained from the Certifier.

1.8 In-situ Concrete

(a) Sub-grade roller test (10t smooth drum roller, 1.8t for tight spaces in agreement with Council).

(b) Steel and formwork prior to placement of concrete.

Schedule 5. Works as Executed Information

The Developer must provide a copyright free set of Works as Executed plans and supporting electronic files in accordance with this Schedule X.

1 Works as Executed Plans

1.1. The Works as Executed Plans are the approved design plans amended to indicate the as-built nature of the work as they deviate from the approved plans and include-

(a) any departure from the approved plans, such departure must be shown clearly in red with all other colours displayed as either a grey scale or in black ink;

(b) any additional work that has been undertaken;

(c) the location of council conduits, utility services infrastructure, subsoil drains associated with road pavements;

(d) stop valves, hydrants, sewer manholes, sewer junctions, interlot drainage, inlet junctions, stormwater drainage and pits, headwalls, Gross Pollutant Traps, rip rap and scour protection, etc; and

(e) the extent of filter media, sub soil drainage, slope batters, weir outlets, spillways channels, embankments, rip rap and scour protection, access ramps, hardstand areas, fencing locations and all other features associated with any Bioretention Basin;

(f) all other details of works to be handed over to Council.; and

(g) for any stormwater pipe identified to be laid at a grade of 2% or less the verification method of the as built grade is a theodolite. This must be clearly identified on a Works as Executed Plans

1.2. The Works as Executed Plans are to be certified by a registered surveyor that the Works as Executed drawings are a full and accurate representation of the constructed works.

2 Provision of GIS data

2.1 The GPS electronic data below is required to be captured and provided with the Works as Executed information. The provider must certify that the data provided complies with this clause.

(a) Survey Type/Standard - Real Time Kinematic (RTK) by registered surveyor

(b) Projection – GDA2020(MGA55)

(c) Position quality - Within 20mm horizontal, 30mm vertical

(d) File format - Co-ordinates to be provided in Excel *.xls spreadsheet or comma delimited *.txt or .csv; and line data to be provided in either MapInfo Tab or DWG formats

(e) Data required - Co-ordinates, AHD height, point codes and unique ID's, distinct lines connecting individual coordinate points clearly differentiated in colour for discrete assets. Levels in MGA (AHD)

(f) Code legend - Code legend to be provided

2.2 The following points, line and related tables are required

(a) Property - Individual lot boundary points;

(b) Roads, Kerbs and gutter at invert to show line and length, including at tangent points. Footpaths on both edges to show line and length. Traffic island around the outside edge to show size and shape;

(c) Water Supply - Water mains at T-junctions and length. Hydrants at the centre of the cover. Stop valves at the centre of the cover. Meter boxes at the centre of the box;

(d) Sewer - Manholes at centre of lid. Property connections at the intersection point with the main and at the end of the junction;

(e) Stormwater - Pits at the centre of the lid. Headwalls at the centre of the headwall. Property connections at the intersection point with the main and at the end of the junction. Water quality devices e.g. swales, bio-detention basins, at relevant points to provide the outline and profile; and

(f) Other - Other significant infrastructure features.

3 Files to be provided

3.1 To satisfy a requirement to provide Works as Executed plans, the Developer must provide as a minimum the following Works as Executed Files-

(a) A full set of the Works as Executed Plans in PDF; and

(b) A full set of the Works as Executed Plans in DWG format; and

(c) The supporting GIS data files.

Schedule 6. Public Benefits & Security Values

1 Overview

The Developer in accordance with this Schedule 6 and this Agreement must provide each Public Benefits and Security Values identified in the tables below, by the due date corresponding to that Public Benefit or Security Value, and any additional specifications identified for that Public Benefit set out in Table X of Schedule 6.

All values in this Schedule 6 are calculated as at the date of this Agreement.

Table 1 – Public Benefits

Contribution	Public Purpose	Manner & Extent	Timing	Contribution Credit	Value of Works
A. Dedication of land					
Dedication of Designated Land					
B. Carrying out of Works					
C. Monetary Contribution					
D. Maintenance Obligations					

Table 2 – Security Values

Security	Purpose	Timing	Value
			.

Table 3 – Attributed Values

Contribution	Attributed Value	Comments

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Table 4 – Additional Specifications

Schedule 7. Disclosures

No disclosures made by the Developer for the purposes of clause 14.214.2 or insert disclosures made.

Schedule 8. Designated Lands

Insert Designated Land Plans

Schedule 9. Plans

Insert Plans

Department of Planning, Housing and Infrastructure

dphi.nsw.gov.au

Benefit-Sharing Guideline

November 2024

Guidance for large-scale renewable energy projects

Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Copyright and disclaimer

Contents

Glossary of terms

Term	Explanation
Applicant	The applicant of a large-scale renewable energy project application or modification
Battery energy storage systems	Grid-scale rechargeable batteries that can store energy from different sources and discharge it into the electricity grid when needed
Benefit-sharing	Benefit-sharing aims to distribute benefits generated by a project between the applicant and the community through mutually agreed opportunities such as funding or sponsoring local community initiatives, programs or projects
Large-scale renewable energy project	Development of solar energy, wind energy, and/or a battery energy storage system that is State significant development (SSD) or critical State significant infrastructure (CSSI)
Local community benefits	Benefits provided to communities at a local government area scale, including nearby hubs for employment, accommodation, and social infrastructure and services
Neighbourhood benefits	Benefits provided to individual landholders, businesses or townships and villages in the immediate vicinity of a project
Planning agreement	Planning agreements are voluntary agreements between one or more planning authorities (such as a council) and an applicant
Regional benefits	Benefits provided to communities across multiple local government areas that are coordinated by EnergyCo as part of the REZ Community and Employment Benefit Program
Secretary's environmental assessment requirements	The Planning Secretary's environmental assessment requirements, that set out the matters that must be addressed in an environmental impact statement

1 Introduction

Three of the remaining 4 coal-fired power stations in NSW will come to the end of their scheduled lives by 2035. We need to increase renewable energy generation, storage and transmission infrastructure to transition the electricity sector and meet the state's renewable energy targets. Most of this infrastructure will be in regional NSW as that is where our best solar and wind resources are located.

Transitioning to renewable energy sources will help us meet our legislated targets to achieve net zero greenhouse gas emissions by 2050. It will also create new jobs, reduce energy costs for households and attract investment to NSW.

The NSW Government's Electricity Infrastructure Roadmap (the Roadmap) sets out a 20-year plan to deliver the infrastructure required to ensure NSW has continued access to cheap, clean and reliable energy.

As part of the Roadmap, the NSW Government will deliver at least 5 renewable energy zones (REZs). These will be in the Central-West Orana, New England, South-West, Hunter Central Coast and Illawarra regions of NSW. REZs are modern-day power stations. They combine renewable energy generation such as wind and solar, storage such as batteries and network infrastructure such as high-voltage poles and wires in dedicated areas in NSW.

Transitioning to renewable energy will also provide a range of direct and indirect benefits for host communities including:

- construction jobs (around 6,300) and ongoing operational jobs (around 2,800)[1]
- lease payments to landholders and farmers to help diversify their income streams and protect against the financial impacts of drought and natural hazards
- payments to neighbours on land adjoining renewable energy infrastructure
- boosts to services and hospitality industries that service the new workforce
- upgrades to local infrastructure
- business for local companies and contractors

While the communities that host these developments benefit from employment and investment, they also experience the most pressure from the changes. This includes direct impacts from individual projects, as well as broader changes to the local landscape and community that may be difficult to foresee and plan for.

The process for assessing and approving large-scale energy projects under the NSW *Environmental Planning and Assessment Act 1979* (EP&A Act) ensures that impacts are minimised and appropriately managed. Whole-of-government strategic planning in REZs also

[1] Estimated employment figures from *NSW Electricity Infrastructure Roadmap Detailed Report* (Department of Planning, Industry and Environment, 2020)

helps manage the roll-out of energy generation, storage and transmission infrastructure. Even with these measures in place, the on-ground effects of the state's energy transition will be predominantly felt in regional areas.

The wider benefits of renewable energy projects are often strategic in nature. Broader benefits (such as decarbonisation) are shared across the state, not just with the communities where the development is undertaken. Local revenue mechanisms, such as Section 7.11 and 7.12 contributions under the EP&A Act, are not usually suitable to address this issue as they have limited application to renewable energy projects.

This means that host communities, which bear the brunt of the changes, may not necessarily experience a proportionate level of benefits from the uptake of renewable energy. We need to make specific efforts to fairly share the proceeds from the transition within the areas in which it is focused.

This guideline provides advice on how benefit-sharing can be incorporated into the consideration and delivery of large-scale renewable energy development and outlines:

- a benefit-sharing policy approach, objectives and implementation strategy
- benefit-sharing mechanisms that operate at neighbourhood, local and regional levels
- a proposed model, including guidance on the expected value of benefit-sharing for individual projects.

This approach encourages applicants to include benefit-sharing when preparing and delivering large-scale renewable energy projects. It will help local communities be more resilient to change and will deliver estimated benefits of up to $414 million to host communities over a 25-year period (in present value terms)[2] in REZs alone (see Figure 1). This will supplement hundreds of millions of dollars in funding which will be made available to REZ communities under the REZ Community and Employment Benefit Program.

The policy will ensure that communities in and outside REZs benefit from renewable energy development in their regions and that the benefits will be proportionate to the amount and scale of development. For instance, a typical 700 MW wind energy project will provide benefits of around $18 million to communities from rates prescribed in this guideline alone.

[2] Based on known or declared capacities for each REZ and assuming 25 years of energy generation. It does not include the benefits that will be generated by renewable energy projects outside REZs or battery energy storage systems.

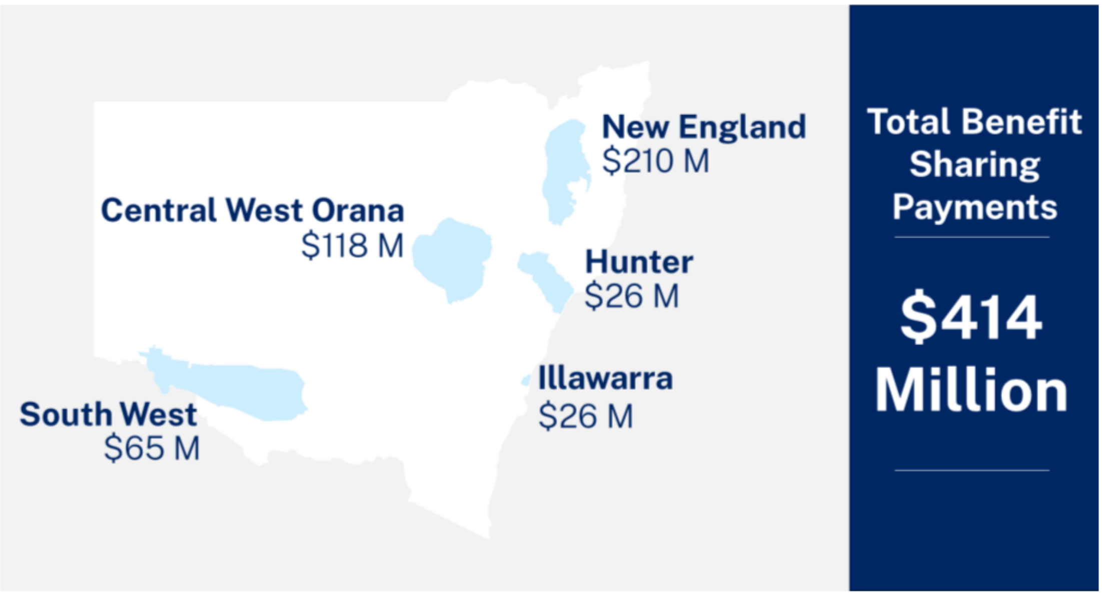


Figure 1. Estimated benefits in renewable energy zones from this guideline[2]

1.1 Purpose of the guideline

The purpose of this guideline is to:

- provide information to applicants, councils and the public about the importance of benefit-sharing for large-scale renewable energy generation and storage in NSW
- outline how benefit-sharing should be incorporated into State significant development (SSD) and critical State significant infrastructure (CSSI) applications for solar, wind and battery energy storage systems (BESS)
- encourage coordination of benefit-sharing programs
- support the rapid roll-out of solar and wind energy generation and storage in NSW, including in REZs, while ensuring that host communities experience tangible, long-term benefits from the transition to renewable energy.

1.2 Application of the guideline

This guideline applies to solar, wind and BESS projects (where BESS projects are proposed on rural zoned land only) that are declared to be SSD or CSSI (large-scale renewable energy projects), whether they are located within or outside a REZ. The guideline does not apply to:

- hydrogen projects
- pumped hydroelectric projects,

- BESS on non-rural zoned land
- electricity transmission infrastructure.

In contrast to solar and wind energy, hydrogen generation and some BESS are more likely to be co-located with other energy and industrial developments (typically in industrial areas or brownfield sites). These projects would be subject to standard council rates and contributions based on their land use zoning and any relevant impacts on local infrastructure and services. On rural zoned land, existing contributions arrangements for BESS may not be appropriate.

The guideline does not prescribe benefit-sharing rates for pumped hydro projects; however, benefit-sharing is strongly encouraged and should be evaluated on a project-by-project basis. In determining an appropriate rate, applicants and planning authorities should consider the nature and magnitude of change likely to be experienced by communities relative to the other infrastructure types prescribed in this guideline.

Transmission projects are subject to a range of existing benefit-sharing arrangements, including landowner payments under the NSW Strategic Benefits Payments Scheme. While this guideline does not apply, benefit-sharing is strongly encouraged, and this should be developed in recognition of these arrangements. Additional guidance can be found in The National Guidelines for Community Engagement and Benefits for Electricity Transmission Projects.

Applicants for large-scale renewable energy projects will need to consider this guideline where it is referenced in the Planning Secretary's environmental assessment requirements and prepare the project's environmental impact statement (EIS) according to the requirements set out in the guideline.

This guideline should also be considered when preparing and assessing applications to modify a consent or approval in instances where it would increase the generating or storage capacity of the project. In these cases, the guideline and the prescribed benefit-sharing rates only apply to the increase in capacity and not the existing, approved capacity of the project.

1.3 Relationship to other guidelines

This guideline is part of the NSW Government’s Renewable Energy Planning Framework and should be read in conjunction with the other documents making up this framework (where relevant), including the *Large-scale Solar Energy Guideline* and *Wind Energy Guideline*.

2

Benefit-sharing for renewable energy

2.1 Overview of benefit-sharing

Benefit-sharing is a general term used to describe different approaches and mechanisms that aim to distribute the financial and other benefits of a project between the applicant and the host community through mutually agreed opportunities.

In the context of large-scale renewable energy projects, arrangements with landholders, councils and local communities (including local Indigenous communities) provide opportunities for community members to directly share in the benefits of projects and for the applicant to enhance their social licence to build and operate the project.

Specific benefit-sharing programs can enhance the benefits for the people in the vicinity of, and most affected by, renewable energy development. This includes neighbours that may be affected by projects nearby, as well as members of the broader community that hosts the development.

Benefit-sharing programs can also help to mitigate the wider intangible impacts of projects that may be otherwise difficult to avoid or minimise. It does this by delivering positive social and economic outcomes for affected communities. However, benefit-sharing is not intended as a means to manage or mitigate the impacts of a project on individual properties or landholders.

If a consent authority finds that a project would have significant negative impacts on the environment or the community, it will ensure appropriate action is taken, such as requiring amendments to the project design or including mitigation measures in consent conditions.

While private agreements between applicants and landholders to host project infrastructure or to manage and mitigate impacts from projects may provide benefits to individual landowners (see the *Private Agreements Guideline*), they are not considered to be forms of benefit-sharing.

Section 3 of this guideline outlines different benefit-sharing arrangements (including examples of programs or schemes) that can operate at different levels or spatial scales, from neighbourhoods to local communities to the broader regional area.

2.2 The importance of benefit-sharing

Benefit-sharing programs can offer a clear and transparent way to demonstrate how renewable energy development contributes to and benefits host communities and can help build community support. The following sections outline the 3 key reasons that make benefit-sharing particularly relevant to the consideration and assessment of large-scale renewable energy proposals and why it warrants a unique approach.

Impacts and benefits are not always proportional

Our society benefits from the growth of the renewable energy sector. However, the impacts of renewable projects are not evenly distributed. Regional communities experience the most pressure and changes, including impacts from individual projects, as well as broader changes to the landscape and community that may be difficult to foresee and plan for in advance.

Standard contribution methods are not always the best fit

Other forms of development are commonly accompanied by financial contributions to local government. However, the standard methods of collecting revenue are not always suitable for large-scale renewable energy projects, or they have limited application.

Individual renewable energy projects generally have limited impacts on local infrastructure and services, which limits the scope to collect local infrastructure contributions under section 7.11 or 7.12 of the EP&A Act. Where there are such impacts, they are addressed through the assessment process and conditions of consent (for example, requiring the applicant to upgrade roads before beginning construction).

The NSW Government is also undertaking separate work to understand and respond to any cumulative impacts that might be caused from multiple and concurrent projects within renewable energy zones. This will consider impacts on social infrastructure and services including waste management, health care and education.

Renewable energy generates relatively less employment

In contrast to other types of industrial development, large-scale renewable energy projects often generate lower levels of ongoing employment. As a result, regional communities may experience significant changes without the long-term benefits of increased local economic activity and improved public and commercial services that often accompany high employment-generating development and related urbanisation.

Benefit-sharing for large-scale renewable energy projects provide a practical and transparent method of addressing these concerns. They can ensure that affected local communities receive direct social, environmental and economic benefits from projects in their area.

3

Policy for benefit-sharing

This section sets out the policy that should be used when developing, assessing, and managing benefit-sharing programs for large-scale renewable energy projects.

3.1 Policy principles

1. Benefit-sharing is standard practice

Benefit-sharing should be incorporated as standard practice. Applicants should offer a reasonable rate consistent with the value prescribed in this guideline.

2. Benefit-sharing is collaborative

Benefit-sharing programs should be designed in partnership with councils. Opportunities to centralise administration should be prioritised to help leverage funds to further enhance community benefits.

3. Benefit-sharing is transparent

Information on benefit-sharing arrangements should be publicly available, including clear details on the administration and distribution of proceeds.

4. Benefit-sharing is community focused

Benefit-sharing should be informed by consultation with the community or community representatives, tailored to the local context and the community's needs and produce outcomes that align with the priorities of the public.

5. Benefit-sharing is proportionate

The distribution of community benefits should reflect the scale of the project and the level of change experienced by the community.

6. Benefit-sharing delivers a positive outcome

Benefit-sharing should have a positive, lasting, and meaningful impact on the community and provide tangible social, environmental, and economic outcomes.

3.2 Benefit-sharing arrangements

The following sections provides advice on how different benefit-sharing arrangements can be used to distribute the proceeds of renewable energy projects to neighbours, local communities and regional communities around a proposed development. The benefit-sharing mechanisms generally differ in the:

- proximity of beneficiaries to the proposed development and its effects
- scale of benefits distributed (i.e. financial value and number of recipients/benefactors)
- administrative mechanisms used to distribute the proceeds of a project (i.e. who receives or administers the funding and how program funds are managed and expended).

These components can be arranged in different ways to ensure that benefit-sharing meets the needs of the affected communities (see the examples in section 5 of this guideline).

3.2.1 Neighbourhood benefits

The first level of benefit-sharing is identified at the 'neighbourhood' level, which includes individual landowners, businesses and small neighbourhoods and villages in the direct vicinity of a proposed development.

Due to their proximity to the development site, neighbours are more likely to be aware of and experience the effects of nearby renewable energy development more acutely.

We encourage renewable energy applicants to explore options for benefit-sharing with the immediately affected community.

Examples of neighbourhood benefits may include:

- minor capital works and improvements such as providing rooftop solar to residences
- funding or constructing neighbourhood community facilities
- sponsorship of local community events, groups or clubs
- offering neighbours subsidies (such as energy discounts or free connections) or investment/co-ownership opportunities.

Benefit-sharing is not intended as a means to manage or mitigate the impacts on individual landowners. For example, the applicant can negotiate private agreements with individual landowners to provide vegetation screening, or monetary compensation to mitigate high visual impacts from a project. This is not considered to be a form of benefit-sharing.

Depending on the benefits to be provided, neighbourhood benefit-sharing programs may form part of a broader local community benefit program that is centrally administered and distributed (see below) or may be negotiated directly between the applicant and individuals (such as through a contract or other agreement specifically related to the benefit-sharing program).

Applicants should outline the details of any proposed neighbourhood benefit-sharing arrangements in the EIS for the project.

Case Study 1 – Neighbour benefit program

The Bowmans Creek Wind Farm involves the development of up to 56 turbines and associated infrastructure, including a new 330 kilovolt (kV) transmission line. The applicant (Ark Energy) has established a program to share benefits with neighbouring landowners.

Property owners with a dwelling within 3.3 km of a turbine are eligible for an annual payment based on the number of wind turbines within a 3.3 km radius of their dwelling.

Those with a dwelling between 3.3 km and 5 km of a turbine (where no other agreement exists) are invited to participate in the project's Neighbour Benefit Program, which offers annual rebates on electricity charges as follows:

- residents between 3.3 - 4 km from a wind turbine will be eligible for an annual rebate of $1,000 on their household electricity costs
- residents between 4 - 5 km from a wind turbine will be eligible for an annual rebate of $500 on their household electricity costs.

Participation in the program does not prevent residents from expressing their views on the project, privately or publicly, at any time.

3.2.2 Local community benefits

Benefit-sharing at the local community level applies more broadly and should be targeted at a local government area scale, including any nearby hubs for employment, accommodation, and social infrastructure and services.

The scale of local community benefits will generally be greater in both financial value and the number of potential recipients or benefactors.

Given the broader application of local community benefit programs, we recommend they be primarily administered and distributed through the councils of the relevant local government areas. Alternatively, these programs could be administered by the applicant in partnership with a community, community organisation or institution (if appropriate and relevant to the type of program on offer) or other applicants in the local government area.

Irrespective of how the programs are administered, the benefit-sharing program must be designed in line with the policy principles set out in section 3.1 of this guideline.

Given the diverse composition of our communities, benefit-sharing at the local community level should consider opportunities for different community groups, particularly local Aboriginal communities. This should always be informed by meaningful and culturally appropriate, place-based engagement that is respectful and authentic.

Examples of local Aboriginal community-specific benefit-sharing programs include:

- capability and/or capacity support for economic participation, including direct or indirect employment
- scholarship programs with partnering education institutions to enable local Aboriginal students to complete courses in specific fields
- sponsorship of Aboriginal community and cultural events such as fundraising events, local markets, cultural sites, community clean up events and garden days
- additional or improved community facilities.

The most appropriate administrators will vary depending on the type of program and may include the NSW Aboriginal Land Council, the relevant local Aboriginal land council, native title groups and local councils.

Council-managed programs

Council-managed benefit arrangements can provide opportunities to consolidate funds from multiple renewable energy projects. This gives councils the ability to deliver bigger community projects or services than would otherwise be possible if funds were directly managed by individual applicants.

The community must be at the forefront of decision-making for any council-managed programs. Committees should be established to decide how money should be spent and should include representation from different community groups.

Benefit-sharing funds must not be used to fund works or services of any kind that should be delivered by a council in the ordinary course of business.

For council-managed programs, we recommend using a planning agreement to establish a community benefit fund. The policy principles should be applied to the establishment and administration of the fund and when distributing proceeds within the fund.

Planning agreements are subject to various requirements under section 7.4 of the EP&A Act. Council must consider these requirements and the guidance set out in *Planning agreements – Practice note – February 2021* (or latest version) if entering into a planning agreement.

Planning agreements should include a review mechanism that allows the terms of the agreement to be renegotiated in the event of any material changes to this guideline.

Examples of expenditure that might be suitable under a council-managed community benefit fund include:

- recurrent costs of infrastructure, services or facilities
- additional or improved open spaces, public facilities or infrastructure such as upgrades to local parks, libraries, community centres, showgrounds, museums and transport infrastructure
- providing funding or works for neighbourhood community facilities (e.g. solar panels)
- initiatives delivered in partnership with other local organisations including scholarship programs to enable local students to complete courses in specific fields (e.g. engineering and project management)
- sponsorship of community events such as fundraising events, local produce markets, nature walks, community clean-up events and gardening days
- sponsorship of local groups such as sporting clubs, biodiversity volunteering groups and community gardens.

Case Study 2 – Planning agreement

Squadron Energy entered into a planning agreement with Inverell Shire Council to support the development of the Sapphire Wind Farm. The agreement provides $187,500 per annum, shared between Glen Innes and Inverell Shire council based on the number of turbines within the LGA.

Using these funds, Inverell Council formed the Sapphire Wind Farm Community Fund Committee under Section 355 of the NSW Local Government Act 1993. The committee is administered by Council and is responsible for assessing funding applications for groups, projects or programs within the Inverell local government area.

Community-led programs

The types of community benefit programs listed above could also be established directly in partnership with the applicant and community organisations or institutions (also see section 5). For instance, initiatives such as scholarship programs and training courses could be offered by the applicant and managed by a relevant educational establishment or other organisation. Similarly, the applicant could offer sponsorships, capital works and other benefits directly to a recipient organisation or community group.

Applicants are also free to directly manage their own community benefit programs and invite the broader community to participate. We encourage applicants to explore different options and offer local communities a range of opportunities to benefit from the project's proceeds.

Case Study 3 – Community reference group

The New England Solar Social Investment Program is managed by a Community Reference Group comprised of five local community members and overseen by ACEN Australia.

The reference group is responsible for assessing two rounds of grant funding each year and has provided over $200,000 to the local community since its inception. The program has funded local sporting groups, community events, health and fitness groups, historical projects, schools and sustainability projects.

Members of the group meet at least four times annually and are reimbursed for expenses in carrying out their roles.

Neighbourhood benefits could equally operate at a broader community level. For instance, applicants could consider providing direct community support through capital works, sponsorships, in-kind assistance, energy subsidies or investment/co-ownership opportunities. However, any capital works that would become the responsibility of council (or incur ongoing maintenance costs for councils) must delivered as a council-led program.

Further examples of benefit-sharing programs and ways to design these programs are outlined in the Clean Energy Council's A Guide to Benefit Sharing Options for Renewable Energy Projects.

3.2.3 Regional benefits (REZ benefit programs)

Generation and storage projects in REZs pay access fees if they connect to new network infrastructure projects. These access fees help pay for the new network and contribute to dedicated funds for community and employment-related initiatives in each region. EnergyCo is coordinating this funding under a Community and Employment Benefit Program, which will invest millions of dollars into regional communities.

Unlike the neighbour and local community benefits described above, these programs can deliver regional-scale benefits across multiple local government areas. The funding will be spent in consultation with communities but could include things like upgrades to telecommunications and internet infrastructure across a region.

Whether or not REZ access fees apply to a large-scale renewable energy project depends on the type of project, whether it is in a REZ, and whether it successfully tenders for access to REZ network infrastructure.

While these regional initiatives are an important component of benefit-sharing, the principles in this guideline do not apply to them. Their consideration and accounting will be managed separately from the planning assessment process for individual projects.

3.3 Distributing benefits

Benefit-sharing funds should be targeted towards the people and communities that are most likely to experience the effects of the proposed development. The amount of funding provided should be distributed based on a balanced consideration of:

- the impacts experienced – funding should be targeted at communities likely to experience the more localised effects of development and not minor ancillary aspects such as long-haul transportation on state roads
- the presence and size of different population centres and communities – larger communities may be eligible for a higher portion of benefits compared to smaller affected communities.

For instance, a wind farm project with many neighbours or a distinct neighbourhood–scale community may apportion a significant share of its total benefit-sharing value to this group through a specific community enhancement fund or via direct negotiation.

On the other hand, a BESS project may have minimal or no neighbourhood-scale community with which to share the benefits. In this case, all the benefits could be shared with the local community through a planning agreement with the local council.

There may be instances where the effects of the development would be experienced outside the local government area (LGA) hosting the development, or the effects could be felt across multiple LGAs. In these instances, the benefits should continue to be distributed towards the communities that are most likely to experience the effects of the development. That means, there may be circumstances in which a project is located wholly in one LGA, but most of the benefits are shared with the neighbouring LGA.

As a general guide, councils should administer no less than 85% of the relevant portion of the total benefit-sharing value. This will help ensure funds are consolidated from multiple renewable energy projects, allowing councils to deliver more valuable community projects or services.

See section 5 for examples on how benefits could be distributed.

3.4 Reporting

The details of any benefit-sharing arrangements are to be made publicly available to ensure transparency and a clear connection between the benefits delivered and individual projects. Councils are responsible for reporting any arrangements that they manage, including programs undertaken through a planning agreement. Applicants are responsible for publicly reporting on any other programs.

This reporting should include a public register that identifies:

- governance arrangements implemented to administer the benefit-sharing arrangements (e.g. representative community board appointment for grant funding)
- the amount of funding provided
- the source of funding including the renewable energy applicant and related renewable energy project (if it is being managed by the council)
- each program funded and how it meets or contributes to the policy principles
- the consultation that was undertaken to identify and develop each program.

Registration, notification and public access requirements may also apply where programs are established through a planning agreement (see our *Planning agreements – Practice note – February 2021* (or latest version). The general planning agreement requirements can be used to satisfy some of the requirements of this policy.

3.5 Implementing the guideline

The Benefit-Sharing Guideline will be implemented through the assessment process under the EP&A Act for large-scale renewable energy projects.

The following sections outline what applicants of large-scale renewable energy projects should do when preparing EISs and what the consent authority will consider when assessing those applications.

3.5.1 Applicant considerations

In developing benefit-sharing models, applicants are required to:

- engage with the relevant council, local communities (including aboriginal communities), and neighbours in the vicinity of the proposed project to consider options for distributing and sharing the benefits of projects at different levels

- develop a proposed model for community benefit-sharing (including neighbourhood and local community benefits where applicable) that is consistent with the policy principles set out in section 3.1 of this guideline
- outline the expected total value (financial amount or equivalent) of community benefits (calculated in accordance with section 4 of this guideline) in the EIS for the project
- implement or otherwise give effect to any benefit-sharing arrangement or requirements specified in any conditions of consent.

3.5.2 Consent authority considerations

When assessing the merits of projects, the consent authority should:

- consider the relative benefits of the project, including the applicant's proposed benefit-sharing model
- determine whether any conditions of consent may be appropriate to ensure the applicant's proposed benefit-sharing model will be implemented
- not impose any additional conditions requiring other contributions under section 7.11 or section 7.12 of the EP&A Act unless they are specifically required to address direct impacts on services and infrastructure.

3.6 Review of benefit-sharing approach

The benefit-sharing approach outlined in this guideline has been developed in recognition of current planning and land use revenue settings, including infrastructure contributions and the local government land rating system.

We will review the policy approach (including the benefit-sharing rates outlined in section 4 of this guideline) if changes are made to the infrastructure contributions or the local government land rating systems that materially affect large-scale renewable energy projects (for example, the introduction of a new land category rating or a new contributions framework that explicitly apply to these projects).

Planning agreements should include review mechanisms that allow the terms of the agreement to be renegotiated:

- if there are any material changes to this guideline
- where the final installed capacity of a large-scale renewable energy project is materially different to that included in any initial agreement.

4 Model and value of benefit-sharing

Applicants for large-scale renewable energy projects are required to outline their proposed model for community benefit-sharing in the EIS. The applicant's proposed model must include:

- an indication of the types and scale of benefit-sharing (including neighbourhood and local community benefits) that will be offered by the applicant and used to distribute and share the proceeds of the project with neighbours and the broader community
- the estimated total value (financial amount or equivalent) of community benefits (both neighbourhood and local community benefits) that will be provided as part of the renewable energy proposal, including any funding to be included in a planning agreement and the financial value of any other programs
- details of specific benefit-sharing programs if known at the time.

4.1 Value of benefit-sharing

We expect applicants to use the following benefit-sharing rates when determining the total funding value for community benefits for a given renewable energy project.

Benefit-sharing rate

Total funding for benefit-sharing should be:

- $850 per megawatt per annum for solar energy development, or
- $1,050 per megawatt per annum for wind energy development, or
- $150 per megawatt hour per annum for stand-alone battery energy storage systems located in a rural zone (i.e. RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry, RU4 Primary Production Small Lots),

based on installed capacity and paid over the life of the development and indexed to the Consumer Price Index[3].

The total value of benefit-sharing, calculated by adding together the proposed funding amounts for any neighbourhood and local community benefit programs (whether council-managed or otherwise), should not exceed the rates outlined above. An example for a wind energy development within 2 local government areas is shown in Figure 2.

[3] As an example, the dollar rate would be $850 per megawatt for a solar energy project for the 2024–25 financial year. The dollar rate would then be adjusted for CPI in each subsequent financial year

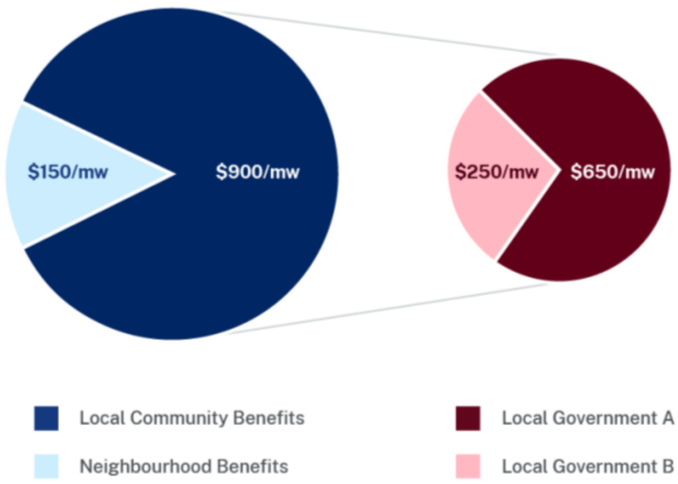


Figure 2. Potential composition of benefit-sharing for wind energy (per annum)

If the proposed development includes both wind and solar generation, the total amount of benefit-sharing should be calculated by:

- separately determining the amounts of wind and solar based on their respective generation capacities and the rates outlined above, and
- adding these amounts together.

The BESS benefit-sharing rate only applies to stand-alone systems and must not be applied to a battery that is developed alongside solar and wind energy generation. An example of how to determine the benefit-sharing amount for mixed infrastructure types is provided below.

Mixed generation and storage example

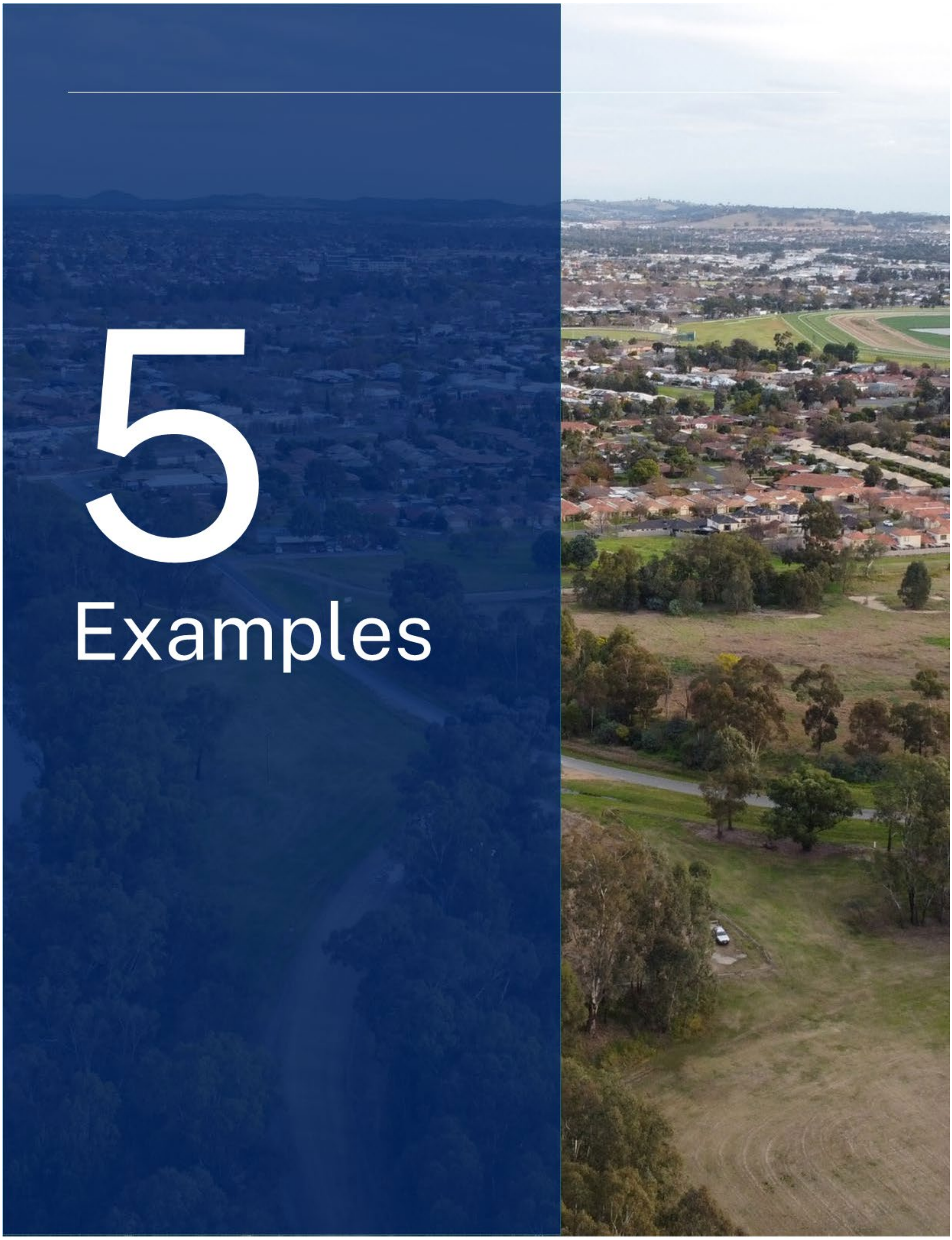
The proposed development includes:

- 300 MW of wind generation capacity
- 200 MW of solar generation capacity
- a 200 MWh battery.

Benefit-sharing values for each development type are:

- Wind – $315,000 per annum
- Solar – $170,000 per annum
- Battery – $0 per annum.

Total benefit-sharing value = $485,000 per annum



5 Examples

The following examples illustrate the application of the principles and guidance in a variety of scenarios.

Example 1 – 600 MW solar energy development

The proposed development is wholly located within LGA A. However, the effects of the development are more likely to be experienced by the 'local community' in the nearest town (3,000 population), which is in neighbouring LGA B. Almost all the workers are expected to reside in a nearby regional city located in LGA B.

Neighbourhood – 20 nearby properties

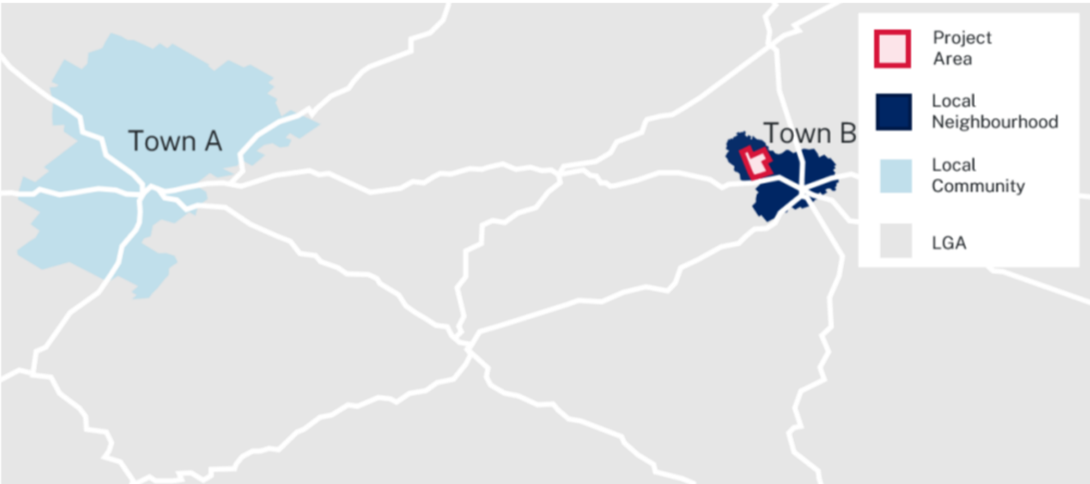
$20,000/year **Neighbourhood enhancement fund**	**$1,000** - annual residential energy rebate

Local community

$55,000/year **Community enhancement fund**	**$35,000** – TAFE/Traineeship grants **$20,000** – Men's Shed sponsorship
$125,000/year **Planning agreement** **Local government A**	**$70,000** - LGA local grants fund **$35,000** – Main street beautification **$20,000** – Cycleway upgrades
$310,000/year **Planning agreement** **Local government B**	**$140,000** - LGA local grants fund **$90,000** – Waste management upgrades **$80,000** – Swim centre upgrades

Example 2 – 1,000 MWh battery energy storage system

The proposed development is wholly within a single LGA. The effects of the development will be experienced by a small number of landholders located near the development and the nearest town (Town B). A slightly larger town (Town A) is located 7 km away.



Neighbourhood and local community – 10 nearby properties

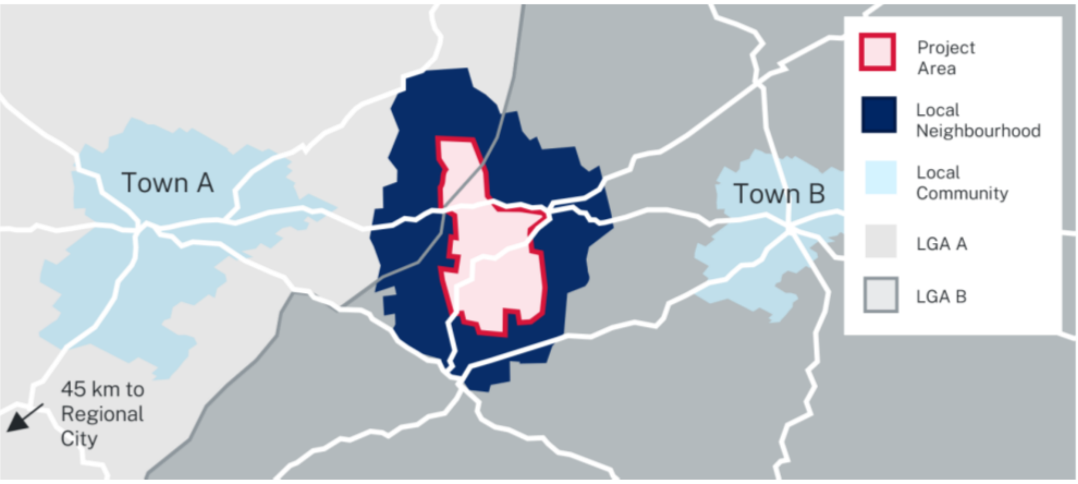
$10,000/year **Neighbourhood enhancement fund for Town B**	**$6,000 – Local community hall upgrade** **$4,000 – Local RFS equipment**

Local community

$3,000/year **Community enhancement fund**	**$3,000 –Traineeship grants**
$137,000/year **Planning agreement** **Local government**	**$65,000** - LGA local grants fund **$27,000** – Community hall upgrades **$25,000** – Cycleway upgrades **$20,000** – Cultural events fund

Example 3 – 400 MW wind energy development

The proposed development is located across LGA A and LGA B. While most of the footprint is within LGA B, the effects will be predominately experienced in LGA A, which is a more established urban area (population of 5,000) and is likely to host more of the workforce. However, LGA B has a larger network of neighbouring landowners and contains a small town (population of 1,500) that will see the project.



Neighbourhood – 50 nearby properties

$25,000/year **Neighbourhood enhancement fund**	**$15,000** - annual residential energy rebate **$10,000** – local neighbourhood grants

Local community

$38,000/year **Community enhancement fund**	**$10,000** – Country Women's Association funding **$8,000** – Community garden fund **$15,000** – Indigenous vocational training grants
$195,000/year **Planning agreement** **Local government A**	**$110,000** - LGA local grants fund **$60,000** – High streets activation **$35,000** – Community hall upgrades
$162,000/year **Planning agreement** **Local government B**	**$75,000** - LGA local grants fund **$47,000** – Heritage trail development fund **$40,000** – Sports field upgrades

Planning & Environment

Practice Note

Local Infrastructure Contributions

January 2019

Contents

Introduction

The New South Wales (NSW) local infrastructure contributions system helps provide new and growing communities with appropriate infrastructure. The *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) sets out how the local infrastructure contributions system works in NSW.

A user-pays philosophy underlies the funding of local or community infrastructure required to satisfy service demand generated by development activity. This requires developers to contribute to the reasonable cost and provision of local public facilities needed to support new development. Transparency and accountability measures in the collection and expenditure of contributions and the provision of public facilities help underpin confidence in the system.

The involvement of the Independent Pricing and Regulatory Tribunal (IPART) in the implementation of the local infrastructure contributions system continues to bring enhanced transparency and accountability to the system through an independent assessment of local infrastructure contributions plans.

In June 2017, the Premier announced the Housing Affordability Strategy for NSW. The strategy aims to facilitate the delivery of state and local infrastructure critical to enable housing supply. The adoption of the strategy has resulted in changes to the local infrastructure contributions framework which are outlined in this Practice Note.

Local Infrastructure Growth Scheme (LIGS) transition areas

As part of the Housing Affordability Strategy, the NSW Government has committed to $369 million to the Local Infrastructure Growth Scheme (LIGS) to support the delivery of local infrastructure in high growth areas (known as LIGS transition areas). The LIGS helps support housing delivery by funding the gap between the amount councils can charge in accordance with contributions plans and the cost of infrastructure. The maximum caps in LIGS transition areas have been revised. New maximum caps are detailed in Table 1.

Contributions plans with contribution rates above these amounts must only include land and facilities on the essential works list. To be eligible to impose a contribution rate above the cap or claim LIGS funding, a Council must submit the contributions plan to IPART for assessment and implement any advice given by the Minister.

If a contributions plan for a LIGS transition area is not an IPART reviewed contributions planthen council will not be eligible for LIGS funding.

Other lands

For all lands (other than exempt land and LIGS transition areas), the following caps on contributions plan charges will apply:

- a capped amount of $30,000 per dwelling or residential lot in greenfield areas
- a capped amount of $20,000 per dwelling or per residential lot in infill areas.

Councils can only levy contributions above the cap if the contributions plan is an IPART reviewed contributions plan and council has implemented any advice given by the Minister. An essential works list will apply when councils are seeking local infrastructure contributions above these caps.

Exempt Land

Exempt land is not subject to the essential works list or the IPART review process.

About this Practice Note

Clause 26(1) of the EP&A Regulation requires contributions plans to be prepared having regard to any relevant Practice Notes adopted by the Secretary.

This Practice Note replaces the previous *Practice Note Local Infrastructure Contributions - January 2018*.

Purpose of this Practice Note

The purpose of this Practice Note is to provide guidance to IPART and to assist local councils to understand the role of IPART in the review of contributions plans.

This Practice Note provides guidance on the local infrastructure contributions plan assessment process by identifying:

- the contributions plans that should be submitted for review by IPART
- the assessment criteria against which contributions plans will be assessed by IPART
- the requirements for submission of contributions plans to IPART.

This Practice Note should be read in conjunction with:

- the Direction issued by the Minister for Planning which relates to the local infrastructure contributions assessment process (detailed below)
- the Department of Planning and Environment's *Development Contributions Practice Notes, July 2005* (2005 Practice Notes) which outline the requirements for local councils in preparing and administering their contributions plans.

Legislative basis

The Minister for Planning issued a Ministerial Direction in 2012 in relation to the maximum contribution amounts that could be charged as local infrastructure contributions. The 2017 Direction amended the *Environmental*

Planning and Assessment (*Local Infrastructure Contributions*) *Direction 2012*[1] (the Direction) to put in place new caps for contribution rates in LIGS transition areas and across the restof NSW. The Direction does not apply to land identified in Schedule 1 (of the Direction) referred to in this Practice Note as exempt land. The exempt land is not subject to either the essential works list or the IPART review process.

The Direction sets out the maximum amounts that may be imposed via conditions of development consent as contributions under section 7.11 of the EP&A Act for certain residential development. However, the Direction allows a council to impose contributions that exceed the capped amounts where the relevant contributions plan is an IPART reviewed contributions plan.

How to use this Practice Note

This Practice Note is structured as follows:

Part 1 provides an outline of the legislative framework for local infrastructure contributions.

Part 2 provides an outline of the respective roles and functions of local councils, IPART and the Department of Planning and Environment in the contributions plan assessment process.

Part 3 provides details of the assessment criteria including the essential works list that IPART uses to assess contribution plans.

Part 4 provides details of submission requirements for contributions plans to IPART.

[1] The Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012, has been amended by the Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2013, Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2016, and Environmental Planning and Assessment (Local Infrastructure Contributions) Amendment Direction 2017.

These directions, as well as a consolidated version for reference, are available on the Department of Planning and Environment's website

Terminology

The following terminology is used to convey key concepts in relation to contributions plans:

- **development application** has the same meaning as in the EP&A Act.
- **development consent** has the same meaning as in the EP&A Act.
- **IPART reviewed contributions plan** is a reference to a contributions plan that satisfies all the items in clause 5(3) of the Direction.
- **LIGS transition areas** means the lands identified in clauses 6A, 6B, 6C and 6D of the Direction and are precincts in the Blacktown, The Hills, Wollongong, Liverpool, Camden and Bayside council areas.
- **local infrastructure contribution (or development contribution)** means the provision made by a developer under a contributions plan, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit to be used or applied towards a public purpose.
- **public benefit** is the benefit enjoyed by the public as a consequence of a development contribution.
- **public facilities** mean public infrastructure, amenities and services

Part 1 Legislative Framework

1.1 General Requirements

Under section 7.11 (s7.11) of the EP&A Act, councils can obtain local infrastructure contributions as a means of funding local infrastructure required as a result of new development. A summary of the general requirements for local infrastructure contributions is provided below:

- If councils wish to seek a contribution under s7.11 of the EP&A Act, they are required under s7.13 of the EP&A Act to prepare a contributions plan. The plan needs to establish a nexus or relationship between the expected types of development in the area and the demand for public amenities and services to meet development related infrastructure demand.
- Section 7.11 contributions are imposed by way of conditions of development consent. The requirement for a contribution is generally satisfied by paying a monetary contribution, dedicating land free of cost and works-in-kind, or all of the above as determined by the consent authority.
- For contributions plans proposing contribution rates above the relevant cap, the essential works list applies (see section 3.2 of this Practice Note) and for contributions plans with rates below the relevant cap, the essential works list does not apply.
- The contribution must be towards 'public amenities or services' (s7.11 of the EP&A Act). While public amenities and public services are not expressly defined, they do not include water supply or sewerage services (s7.1 of the EP&A Act).
- Contributions plans can require the payment of a monetary contribution towards the cost of providing the public amenities or public services (being the cost as indexed in accordance with the regulations) (s7.11(3) of the EP&A Act).

1.2 Ministerial Direction - section 7.17 of the EP&A Act

Review requirements for contributions plans

The Direction allows councils to submit any contributions plan[2] that proposes to charge a contribution rate above the amounts specified in the Direction to IPART for assessment (see Table 1).

[2] If council has an existing contributions plan that has been assessed by IPART and the plan is being amended as under Clause 32(3) of the EP&A Regulation, then the Direction does not require the council to resubmit the plan to IPART to continue to charge contributions in accordance with the IPART assessed plan.

For councils in LIGS transition areas (refer to Table 1), IPART must assess the contributions plan and the council must make any changes advised by the Minister before councils can access LIGS funding or charge the new contribution rates.

Contribution caps

The Direction applies to consent authorities when a consent authority imposes conditions of development consent requiring a monetary contribution under s7.11 of the EP&A Act. The Direction also applies to accredited certifiers and the issue of complying development certificates. The maximum allowable contributions, as outlined in the Direction, are summarised in Table 1.

Table 1 – Explanation of Clauses in the Direction

Clause in Direction	Explanation of Clause	Where does it apply to
Staged increase of the caps in places identified as LIGS transition areas **Clauses 6A, 6B, 6C, 6D**	In the LIGS transition areas the caps (per lot or dwelling) are as follows: • $35,000 in greenfield areas and $25,000 in infill areas on 1 January 2018; • $40,000 in greenfield areas and $30,000 in infill areas on 1 July 2018; • $45,000 in greenfield areas and $35,000 in infill areas on 1 July 2019; and • lifted entirely on 1 July 2020. From 1 July 2020 there will be no cap on contributions if imposed in accordance with an '***IPART reviewed contributions plan'***.	Transition areas
Areas exempt from the Direction **Clause 4 and Schedule 1**	The Direction does not apply to the areas set out in Schedule 1 (Land where there is no cap). These areas are where generally more than 25% of development had already occurred prior to September 2010.	Exempt land
Provision for contributions that exceed the caps of $30,000 or $20,000 per dwelling /lot where the relevant plan is an IPART reviewed contributions plan (as defined below). **Clauses 6 (2), (3) and (5)**	Contributions may exceed an amount based on the caps of $20,000 per dwelling or lot (infill areas) or $30,000 (greenfield areas) per dwelling/ or lot if imposed in accordance with an '***IPART reviewed contributions plan'***.	All areas except for LIGS transition areas and exempt land

1.3 Requirements for an IPART reviewed contributions plan

As defined in clause 5(3) of the Direction an IPART reviewed contributions plan is a contributions plan that satisfies all the following:

a. IPART has reviewed the contributions plan (or a draft of the plan) in accordance with assessment criteria set out in any applicable practice note, including whether the facilities to which the contributions plan relates are on any essential works list set out in the practice note,

b. IPART has published a report of its review on its website and forwarded it to the Minister for Planning,

c. following the forwarding of the report to the Minister, the Minister (or a nominee of the Minister) has advised the relevant council as to any amendments required to the contributions plan,

d. the Minister's (or nominee's) advice to the council has been published on the website of the Department of Planning and Environment,

e. the relevant council has approved the plan, and has made any amendments to the plan, in accordance with the written advice of the Minister or the Minister's nominee.

Part 2 - Contributions Plan Assessment Process

The respective roles and functions of local councils, IPART and the Department of Planning and Environment in the contributions plan assessment process are outlined in this section below. The process for assessing contributions plans is detailed in Figure 1.

2.1 Role of Local Councils

Local councils prepare and exhibit the draft contributions plans in accordance with the EP&A Act and EP&A Regulation. Council may submit the contributions plan (or a draft of the plan) to IPART for review as either:

- a new contributions plan
- a new contributions plan that seeks to amend an existing contributions plan consistent with clause 32 of the EP&A Regulation.

The local council may adopt (or re-adopt) the contributions plan after it has implemented the advice received from the Minister. The Minister's advice will consider the recommendations from IPART's review.

Once the amendments have been made and council has adopted the plan, the council may impose the contributions s conditions of development consent, consistent with the plan (subject to the relevant caps in the Direction for development in LIGS transition areas). In LIGS transition areas, a council is then able to apply for LIGS funding.

Local councils do not need to submit a contributions plan (or draft of the plan) to IPART for assessment if the contributions plan falls wholly within the areas listed in Schedule 1 of the Direction.

The timing of when to adopt a contributions plan is a matter for Council having regard to the 2005 Practice Notes and the Ministerial Directions (Local Contributions). Consideration should be given to whether reexhibition of the plan is required. The following guidance is provided to assist Council in determining the appropriate time to adopt a contributions plans when IPART review is required:

Where there **is not** an existing IPART reviewed contributions plan in place.	Adoption **before** IPART review would enable Council to levy contributions subject to the maximum cap amount as set out in the Ministerial Direction. Note: Council should consider including a statement in the contributions plan expressly referring to the effect of the Direction, being that contributions are capped at the maximum cap amount until the plan is an IPART reviewed contributions plan.

Where there **is** an existing IPART reviewed contributions plan in place.	Adoption **after** the IPART review process is complete would enable Council to continue to levy under the existing IPART reviewed contributions plan while the new plan is under assessment. Note: If Council were to adopt a new or revised plan before the IPART review is complete, then contributions levied under this plan will be subject to the maximum cap set out in the Ministerial Direction.

2.2 Role of IPART

IPART is an independent body that oversees the regulation of the water, gas, electricity and public transport industries in New South Wales. IPART is an economic regulator and provides independent economic advice to the Minister for Planning in relation to the assessment of contributions plans that propose contributions that exceed capped amounts.

IPART will review the contributions plan against the assessment criteria, including the essential works list (refer to section 3.2 and Appendix A) and may engage the services of consultants to advise on aspects of the draft contributions plan.

IPART may also consult with other government departments, such as the Department of Planning and Environment, to obtain specialist advice regarding aspects of the contributions plan (or a draft of the plan). IPART will use this advice to inform its decision-making and recommendations to the Minister for Planning.

On completion of the assessment, IPART will provide its advice to councils and the Minister for Planning. This advice will focus on whether the contributions plan (or a draft of the plan):

- meets the assessment criteria set out in Part 3 of this Practice Note
- complies with the requirements of the EP&A Act, EP&A Regulation and the 2005 Practice Note.

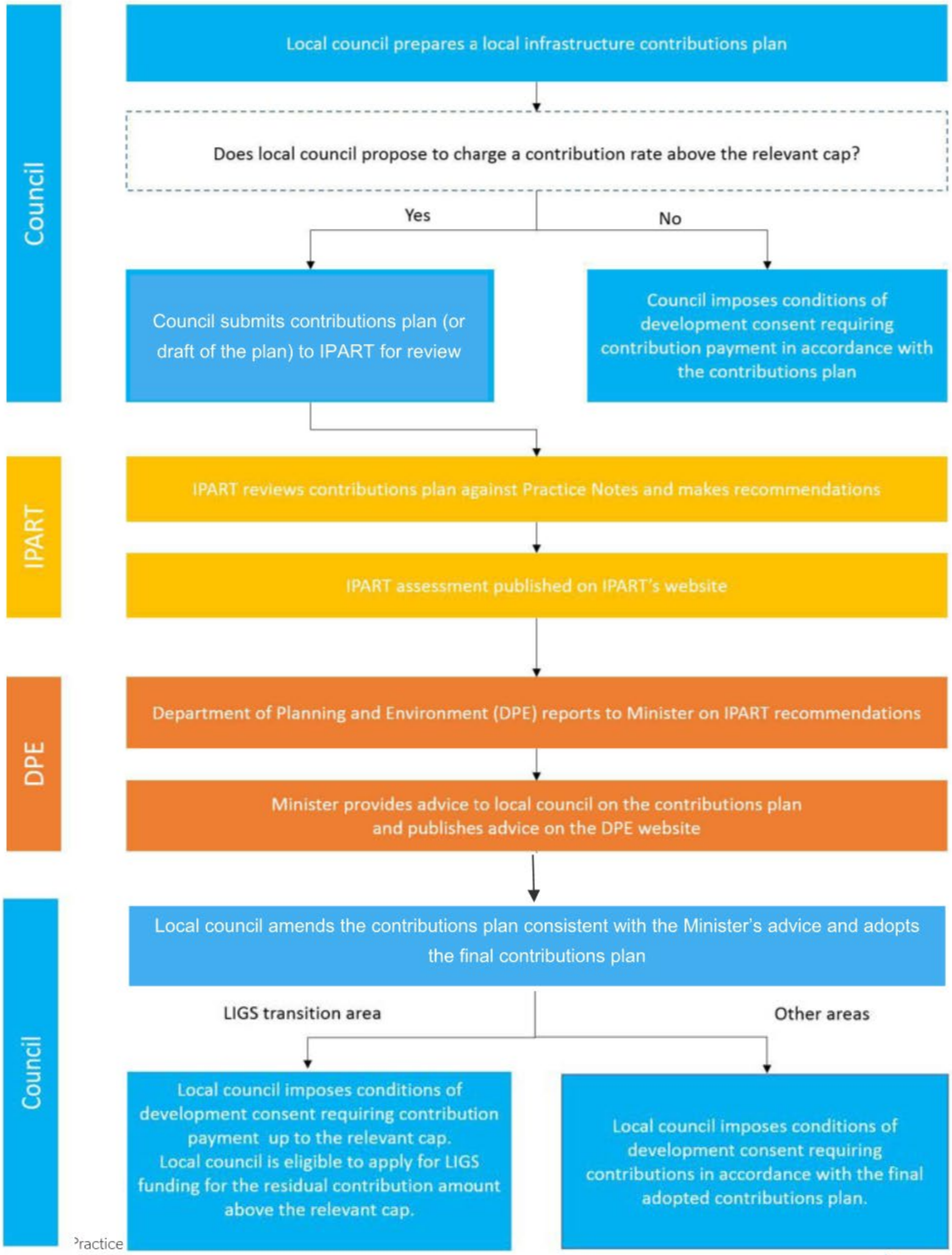
IPART will publish copies of the contributions plan (or a draft of the plan), consultants' reports (if relevant) and IPART's final report of recommendations on its website once the assessment process is finalised.

2.3 Role of the Minister for Planning

The Minister for Planning considers the report and recommendations of IPART. The Minister for Planning provides advice to council on the contributions plan, particularly on whether it should make any changes to the contributions plan and publishes the advice on the DPE website.

Council must make changes and adopt the revised contributions plan in accordance with the Minister's advice.

Figure 1 Process for assessing local infrastructure contributions plans



Part 3 Assessment criteria

3.1 What are the criteria that will be used by IPART to evaluate contributions plans?

When undertaking its evaluation of contributions plans, IPART will assess whether:

1. the public amenities and public services in the plan are on the essential works list as identified within this Practice Note
2. the proposed public amenities and public services are reasonable in terms of nexus (the connection between development and the demand created)
3. the proposed development contribution is based on a reasonable estimate of the cost of the proposed public amenities and public services
4. the proposed public amenities and public services can be provided within a reasonable timeframe
5. the proposed development contribution is based on a reasonable apportionment between:
    - existing demand and new demand for the public amenities and public services, and
    - different types of development that generate new demand for the public amenities and public services (e.g. between different types of residential development such as detached dwellings and multi-unit dwellings, and between different land uses such as residential, commercial and industrial).
6. the council has conducted appropriate community liaison and publicity in preparing the contributions plan
7. the plan complies with other matters IPART considers relevant.

Attachment A provides a detailed list of matters that IPART may consider when making its assessment against each criterion.

3.2 Essential works list

The following public amenities or public services are considered essential works:

- land for open space (for example, parks and sporting facilities) including base level embellishment
- land for community services (for example, childcare centres and libraries)

- land and facilities for transport (for example, road works, traffic management and pedestrian and cyclist facilities), but not including carparking
- land and facilities for stormwater management
- the costs of plan preparation and administration.

The essential works list is relevant only to those contributions plans that propose a contribution level above the relevant cap (unless otherwise directed by the Minister for Planning).

The essential works list does not apply to contributions plans currently below the relevant cap or to those contributions plans that are exempted from the relevant cap.

Base level embellishment

Base level embellishment of open space is considered to be those works required to bring the open space up to a level where the site is secure and suitable for passive or active recreation. This may include:

- site regrading
- utilities servicing
- basic landscaping (turfing, asphalt* and other synthetic playing surfaces planting, paths)
- drainage and irrigation
- basic park structures and equipment (park furniture, toilet facilities and change rooms, shade structures and play equipment)
- security lighting and local sports field floodlighting
- sports fields, tennis courts, netball courts, basketball courts (outdoor only), but does not include skate parks, BMX tracks and the like.

*Note: 'asphalt' (under 'basic landscaping') includes at-grade carparks to the extent that they service the recreation area only and does not include multi-storey carparks.

Community services

For the purposes of these Practice Notes, 'community services' means a building or place:

- owned or controlled by a public authority or non-profit community organisation,
- and used for the physical, social, cultural or intellectual development or welfare of the community,
- but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

These may include (but are not limited to):

- community centres/halls
- libraries
- neighbourhood centres
- youth centres
- aged persons facilities (Senior Citizens centres, Home and Community Care centres)
- childcare facilities
- public art gallery
- performing arts centres.

Plan administration

Plan administration costs are those costs directly associated with the preparation and administration of the contributions plan. These costs represent the costs to a council of project managing the plan in much the same way as the project management costs that are incorporated into the cost estimates for individual infrastructure items within a plan.

Plan administration costs may include:

- background studies, concept plans and cost estimates that are required to prepare the plan
- project management costs for preparing and implementing the plan (e.g. the employment of someone to co-ordinate the plan).

Note: Plan administration costs include only those costs that relate directly and solely to the preparation and implementation of the plan and do not include costs that would otherwise be considered part of council's key responsibilities such as core strategic planning responsibilities.

Environmental works

The acquisition of land and the undertaking of works for environmental purposes e.g. bushland regeneration or riparian corridors are **not** defined as essential works for the purposes of this Practice Note.

The only exception to this is where it can be demonstrated that the land and/or works in question serve a dual purpose with one or more of the categories of works that meet the definition of essential infrastructure outlined above. In this situation, only the component of land and/or works that serves the dual purpose can be considered as essential works.

Part 4 Submission Requirements

4.1 What additional information will IPART need?

IPART's review of contributions plans will be based upon this Practice Note, the EP&A Act and EP&A Regulation, the 2005 Practice Notes and relevant Ministerial Directions. In order to clarify the requirements for councils, IPART's application form provides a checklist of the information needed for IPART to complete the review. This application form can be found on IPART's website (http://www.ipart.nsw.gov.au).

Councils should insert answers to the questions and/or details of where each piece of information can be found within the contributions plan or supporting information and must include the completed checklist with the submission.

4.2 How a council can submit a contributions plan for review

Councils are to submit their contributions plans and relevant documentation (including a completed application) in electronic form and may provide a hard copy. Once received, IPART will place the contributions plan on IPART's website.

Submissions are to be made to:

Local Government Team IPART

PO Box K35

Haymarket Post Shop 1240

Electronic copies may be sent to: localgovernment@ipart.nsw.gov.au

Attachments

Attachment A – Examples of detailed consideration for assessment criteria

1. The public amenities and public services in the plan are on the essential works list as identified within this Practice Note.
2. There is nexus between the development in the area to which the plan applies (the development area) and the kinds of public amenities and public services identified in the plan.
   - What are the types of public amenities and services for which the proposed development will create demand?
   - On what basis have the estimates of demand for the public amenities and public services been established? Is there a needs assessment?
   - Has the council assessed the implications of the expected types of development catered for by the contributions plan on the demographic structure of the development area?
   - Is there a clear and acceptable methodology for estimating population change arising from the expected types of development?
   - Is the information on demand both reliable and up-to-date?
   - Can the new demand be accommodated, in whole or in part, within existing public amenities and public services?
   - Are the public amenities and public services appropriately located for the expected types of development in the area to which the plan applies?
   - If the expected development did not occur, would the public amenities and public services still be required?
3. The proposed development contribution is based on a reasonable estimate of the cost of the proposed public amenities and public services.
   - How were the plan and cost estimates for the land and works prepared?
   - Are the costs up-to-date?
   - Do the cost estimates include all of the costs required to bring the public amenities and public services on the essential works list into operation (e.g. land, capital, fitout, design and project management costs)?

- Have relevant professionals (e.g. quantity surveyors, chartered surveyors, land valuers) been engaged to provide an independent assessment of the costs of providing the public amenities and public services?
- How has the council taken Consumer Price Index (CPI) into account?
- Are the assumptions and calculations robust?
- Has a Net Present Value (NPV) methodology been utilised? If so, has an appropriate discount rate been used?
- Does the plan seek to recoup funds?

4. The proposed public amenities and public services can be provided within a reasonable timeframe.
   - Is the timeframe (year or threshold) for provision relevant for the specific kinds of public amenities and public services?
   - Will the public amenities and public services be provided at a time when those demanding the infrastructure require it?
   - Does the plan provide for pooling of funds?
5. The proposed development contribution is based on a reasonable apportionment of costs.
   - Are the public amenities and public services only required to meet the need of the new development or will it also serve the existing community?
   - How is the existing community accounted for in the apportionment of costs?
   - How are costs apportioned between different types of land use (e.g. residential, industrial and commercial land uses?
6. The council has conducted appropriate community liaison and publicity in preparing the contributions plan.
7. The plan complies with other matters IPART considers relevant.
   - When did the contributions plan come into effect? When was the plan last reviewed? When was the plan last amended without the need to review the plan?
   - What is the relationship with Local Environmental Plans (LEP) and Development Control Plans (DCP), and is there any programmed review of these instruments that may affect the underlying assumptions within the plan?
   - Does the plan comply with any other matter IPART considers relevant?