

# PLANNING AGREEMENTS POLICY



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## Executive Summary

A planning agreement is a voluntary arrangement between a developer and one or more Councils and/or other planning authorities under which the developer is required to dedicate land free of cost, pay a monetary contribution or provide any other material public benefit, or any combination of them, to be used for or applied towards the provision of public infrastructure or another public purpose.

Planning agreements are part of the NSW development contributions system. Most types of development have at least some impact on the demand for public amenities and services provided by Councils. Development contributions conditions imposed on development consents (such as direct contributions or indirect contributions) are the means by which Council are able to require developers to mitigate these impacts.

Instead of (or in addition) imposing these conditions a Council and a developer may negotiate a planning agreement addressing development contributions that relate to a development. The planning agreement may address purposes and contributions included in a contributions plan and may also address other purposes and contributions that have a wider public benefit.

Draft planning agreements may be negotiated concurrent with the preparation of a development application or as part of a request for rezoning. The content of, and process and procedures for negotiating, exhibiting and executing planning agreements are set out in the *Environmental Planning and Assessment Regulation 2000*. Council has prepared this document to provide additional requirements and guidance for the use of planning agreements in its area.

The key advantage of planning agreements is that they are a more flexible type of development contributions mechanism than either direct or indirect contributions. Agreements allow a developer to propose alternatives and variations to the timing and method of delivering public infrastructure. They also allow a planning authority to secure planning benefits that exceed a developer's usual contributions obligation.

With flexibility however comes a responsibility to act fairly and consistently. Council thus has a duty to act with probity and transparency in planning agreement negotiations and in the interests of the wider community. This document is designed to help achieve this objective by setting out Council's policy on the use, negotiation and administration of planning agreements to which it becomes a party to.

## **1. Introduction**

### **1.1 Name and Commencement of this Policy**

This Policy is called the *Municipality of Kiama Planning Agreement Policy*.

This Policy commenced on 21 July 2009, the date on which Council adopted this Policy.

### **1.2 Purposes of this Policy**

The purposes of this Policy are:

- To provide a facility for the Council and developers to negotiate flexible outcomes in respect of development contributions.
- To enhance the range and extent of development contributions made by development towards the provision of public infrastructure in the Council's area.
- To establish a framework addressing the Council's use of planning agreements affecting land in the Kiama LGA that is fair, transparent and accountable.
- To set out Council's policies and procedures on the scope, negotiation and administration of planning agreements.
- To facilitate public participation and to allow the community to gain an understanding of the benefits of appropriate planning agreements for the provision of public benefits.

### **1.3 Legal Context for Planning Agreements**

The content of and process and procedures for negotiating, exhibiting and executing planning agreements are set out in the Act and Regulation. All planning agreements must meet these requirements.

The Department of Planning's *Development Contributions Practice Note – Planning Agreements* provides best practice guidance on planning agreements.

This Policy has been prepared in accordance with the Act and Regulation and seeks to implement the Department of Planning's best practice guidelines at the local level.

This Policy is not legally binding. However it is intended that the Council and other parties to proposed planning agreements (and their representatives) will follow this Policy to the fullest extent possible.

#### 1.4 Definitions Used in this Policy

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

**Amendment Act** means the *Environmental Planning and Assessment Amendment Act 2008*.

**Community Infrastructure** means public amenities and public services but does not include water supply or sewerage services.

**Council** means the Council of the Municipality of Kiama.

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

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

**Development Contribution** means the payment of a monetary contribution, the dedication of land, the carrying out of work-in-kind, the provision of a material public benefit or any combination of the above.

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

**Explanatory Note** means a written statement associated with a draft planning agreement in accordance with Clause 25E of the Regulation.

**Key Community Infrastructure** means:

- a) Local roads;
- b) Local bus facilities;
- c) Local parks;
- d) Local sporting, recreational and cultural facilities and local social facilities (being community and child care centres and volunteer rescue and volunteer emergency services facilities);
- e) Local car parking facilities;
- f) Drainage and stormwater management works;
- g) Land for any community infrastructure (except land for riparian corridors);
- h) District infrastructure of the kind referred to in paragraphs (a)-(e) but only if there is a direct connection with the development to which a contribution relates.

**Instrument Change** means a change to an environmental planning instrument.<sup>1</sup>

<sup>1</sup> "Environmental Planning Instrument" is defined in Section 4 of the Act and means a State Environmental Planning Policy, or a Local Environmental Plan and (except where otherwise expressly provided by the Act) includes a deemed Environmental Planning Instrument.

**Planning Agreement** means a voluntary agreement referred to in Section 116T of the Act.

**Planning Authority** means a planning authority defined in Section 116A of the Act.

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

**Public** includes a section of the public.

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

**Public Infrastructure** includes:

- Public amenities and public services; and
- Affordable housing; and
- Transport infrastructure.

**Provision of Public Infrastructure** includes:

- The provision, extension and augmentation of (or the recoupment of the cost of providing, extending or augmenting) public infrastructure; and
- The funding of recurrent expenditure relating to the provision, extension and augmentation of public infrastructure; and
- The conservation or enhancement of the natural environment; and
- Any action of a planning authority in connection with the exercise of any statutory function under this Act, including the carrying out of any research or investigation and the preparation of any report, study or instrument.

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

**Works in Kind** means the provision of a facility which is already nominated in the works schedule of a contributions plan.

## **2. Key Principles and Requirements for Planning Agreements**

### **2.1 The Circumstances in which Council would consider Entering into a Planning Agreement**

Circumstances in which the Council will consider entering into a planning agreement with a developer would include:

- A developer voluntarily desires to be a party to such an agreement;
- Alternative means of securing public benefits from the development process (such as through direct or indirect contributions) are unwieldy, inappropriate or inferior;
- There is a clear public interest in pursuing a planning agreement; and
- The planning agreement would meet the acceptability test and fundamental principles identified in Clause 2.2 and 2.3 of this Policy.

### **2.2 Acceptability Test to be Applied to all Planning Agreements**

Council will apply the following acceptability test to determine whether it will enter into a planning agreement.

Where the Council, in its opinion, determines that any of the following questions cannot be answered “yes”, it will not enter into an agreement.

- Is the infrastructure in the proposed planning agreement categorised as “key community infrastructure” as defined in the Regulation or, if not, has the infrastructure been approved as “additional community infrastructure” by the Minister for Planning?
- Is the proposed planning agreement directed towards proper or legitimate planning purposes, having regard to the planning controls and policies applying to development in the Kiama LGA?
- Will the proposed planning agreement likely produce outcomes that meet the values and expectations of the wider Kiama community and protect the overall public interest?
- Does the proposed planning agreement provide for a reasonable means of achieving the relevant purposes and outcomes and securing the public benefits?
- Does the proposed planning agreement conform to the principles contained in Clause 2.3 of this Policy?



### **2.3 Principles Governing the Use of Planning Agreements**

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

- Planning decisions will not be bought or sold through planning agreements;
- Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms;
- The Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act or law;
- The Council will not use planning agreements for any purpose other than a proper planning purpose;
- The Council will not seek benefits under planning agreements that are unrelated to particular development, nor will the Council give undue weight to a proposed planning agreement when considering a proposed planning agreement;
- Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements; and
- Where the Council has a commercial stake in development the subject of an agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interests in the development.

### **3. Scope of Planning Agreements**

#### **3.1 Matters Covered by a Planning Agreement**

##### **3.1.1 Minimum Inclusions**

A planning agreement must provide for the following:

- A description of the land to which the agreement applies;
- A description of the change to or the making or revocation of the environmental planning instrument, or the development, to which the agreement applies;
- The nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made;
- In the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of direct (Section 94) or indirect (Section 94A) contributions to the development;
- If the agreement does not exclude the application of direct or indirect contributions to the development, whether benefits under the agreement are or are not to be taken into consideration in connection with requiring such a contribution;
- A mechanism for the resolution of disputes under the agreement;
- The enforcement of the agreement by a suitable means such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

##### **3.1.2 Additional Inclusions**

Council may require a planning agreement to include additional details such as:

- The date or circumstances at which time a planning agreement may come into effect and when the developer's obligations under a planning agreement arise. Council will generally require a planning agreement to provide that the developer's obligations take effect when the first development consent operates in respect of development that is the subject of the agreement;
- Whether money contributed under a planning agreement may be pooled with other money from planning agreements and/or monetary development contributions and paid progressively towards for the purposes for which the money has been levied;

- The times or thresholds at which and, if relevant, the period during which, the developer is to make provision for the works, land, money or other public benefits described in the planning agreement;
- The timing and manner in which a work, land or other public benefit is to be made available for the provision of public infrastructure and handed over to the Council;
- The design, technical specification and standard of any work required by the planning agreement to be undertaken by the developer;
- The procedure for indexing any monetary contributions required to be paid by the developer;
- The circumstances in which a developer's obligations may be modified which may include:
  - Changes to the planning controls applying to the land;
  - Changes to the development the subject of the development consent relating to the planning agreement;
  - The lapsing of a development consent; or
  - Other changes affecting the operation of the planning agreement.
- Conditions under which developers may assign their rights and obligations under a planning agreement to another person or entity not party to the original agreement;
- The circumstances in which a developer's obligations shall be considered to be discharged;
- The mechanism under which the performance and milestones contained under the planning agreement are periodically reviewed with the involvement of all parties;
- Details to effect the administration and implementation matters identified in Clause 5 of this Policy; and
- Any other matters relevant to securing the public interest in the achievement of the public benefits contained in the planning agreement.

### **3.2 Form and Purpose of Contributions that Council could Seek through a Planning Agreement**

Planning agreements can be used for or applied towards the provision of public infrastructure or another public purpose. Contributions may be in the form of land dedication free of cost, a monetary contribution, provision of other material public benefit or any combination of these.

Voluntary planning agreements entered into by Council can only apply to the provision (or recouping of the cost of provision or improvement to) public infrastructure that is key community infrastructure. Any additional infrastructure must have the approval of the Minister for Planning.

Instances where the use of a planning agreement may be relevant to the development of land in the Kiama LGA include:

- Where it is in both the Council's and the developer's interest to "package" a range of development contributions related to a proposed development. This may include contributions otherwise required by conditions of consent under Section 80A(1)(f) or (h) of the Act, or other contributions or arrangements described below;
- As a means of providing community infrastructure required to meet the demands generated by new development.
- Where a developer proposes to provide planning benefits to the community. Planning benefits may take the form of additional or better quality community infrastructure than is the "baseline" standard specified in Council's development control plans, contributions plans and engineering specifications. Planning benefits may also take the form of land and works that provide a public benefit enjoyed by the wider community and not just the users or occupants of the development;
- As a means of facilitating the conservation of ecologically significant lands or items of environmental heritage;
- As a means of securing recurrent funding of community infrastructure, whether the infrastructure is located within or outside of the site the subject of the instrument change or development application. Note that where the infrastructure primarily serves the development to which the planning agreement relates the arrangement for recurrent funding may be in perpetuity. Where the infrastructure or public benefit is intended to serve the wider community, Council will only seek that the developer make contributions towards the recurrent costs of the facility until a public revenue stream is established to support to ongoing costs of the facility;
- As a means of managing credits, offsets, work in kind, material public benefits, valuation of non-monetary benefits etc on a staged development site or in relation to the provision of critical community infrastructure that can be funded by one major developer but will benefit a number of other developers (for example, a link road).

## **4. Negotiation Procedures, Probity and Transparency**

### **4.1 Negotiation Procedures**

#### **4.1.1 General**

The process for negotiation of planning agreements must be fair, reasonable, transparent and accountable.

Council will ensure that all negotiations with a developer and their consultants are sufficiently separated and documented.

Council is required under the Act and Regulation to ensure that a planning agreement is publicly notified as part of and in the same manner as a contemporaneously with the application for the instrument change or the development application to which it relates. The planning agreement must therefore be negotiated and documented before it is publically notified as required by the Act and Regulation.

Council prefers that a planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement.

#### **4.1.2 Participants and their Roles**

The parties to a planning agreement will include Council and the developer and, if the developer is not the owner of the land the subject of the planning agreement, the land owner. The parties may also include another planning authority.

Council negotiations will be led by an officer formally given delegated authority by the elected Council. Other Council officers may also be involved in the negotiation process.

For probity reasons, an officer involved in the direct negotiation of a planning agreement will not be an officer involved in the assessment of the instrument change or development application the subject of the planning agreement.

Similarly, at no stage will an elected representative of the Council be involved in negotiating a planning agreement. Councillors' extent of involvement shall be limited to consideration and determination of the instrument change or development application the subject of the planning agreement.

Council may appoint third parties to assist it in the negotiation process, including specialist facilitators or advisors on particular aspects of the agreement.

Where the Council has a commercial stake in development the subject of an agreement, it should take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development.

#### **4.1.3 Process**

Negotiation of a planning agreement will generally involve the following steps (as a minimum):

- 1) As part of development or instrument change application pre-lodgement discussions, the parties will decide whether to commence negotiation of a planning agreement and, if negotiation is to commence, the general scope and content of the planning agreement.
- 2) The parties will then each appoint a person or persons to represent them in the negotiations, appoint another person to record minutes of all negotiations and decide whether to appoint an independent facilitator to conduct or assist in negotiations. The costs of an independent facilitator will generally be shared between the parties to the agreement.
- 3) The parties will identify the issues for negotiation and undertake the negotiations. If agreement is reached, the proposed planning agreement shall be prepared. The parties shall decide which party will prepare the agreement. When prepared, a copy of the agreement shall be provided to all the parties.
- 4) If any of the public infrastructure proposed to be included in the agreement does not meet the definition of key community infrastructure contained in the Regulation, a submission will be prepared for the Minister for Planning seeking approval for additional community infrastructure.
- 5) Further negotiation and adjustment of the specific terms of the agreement may take place.
- 6) The developer then submits the instrument change or development application to the Council, accompanied by the proposed planning agreement. The application must state the offer by the developer to enter into a planning agreement.
- 7) The Council will prepare an explanatory note relating to the proposed agreement pursuant to Clause 25E of the Regulation.

- 8) The proposed planning agreement will be publicly exhibited together with the proposed instrument change or development application in accordance with the requirements of the Act and Regulation. The minimum exhibition period will be 28 days. Any person may make submissions to the application.
- 9) The proposed planning agreement may be subject to further negotiation between the parties to consider any issue arising out of the public exhibition. This may result in the proposed planning agreement being modified. Where the modification is considered by the Council to result in a significant reduction in the public benefit to the exhibited planning agreement, Council will publicly renotify and make available for public inspection the modified planning agreement and the application to which it relates.
- 10) Council will consider the proposed planning agreement and the application to which it relates against the key considerations for development contributions (see below). Council will then issue a determination of the application. Both the proposed planning agreement and public submissions made in relation to that agreement will be matters for consideration in Council's determination of the instrument change or development application.
- 11) Where the application to which a planning agreement relates is a development application and if Council approves the application, Council will impose a condition of consent requiring the planning agreement to be entered into between the parties. Only the agreement the subject of the offer by the developer can be entered into. Any modifications to a planning agreement, whether sought by the Council or other parties to the agreement, will need to be re-exhibited and reconsidered by Council.
- 12) The planning agreement is entered into when it is signed by all parties. The planning agreement comes into effect at the time stated in the agreement.

### **Key Considerations for Development Contributions**

Council is required under the Act to have regard to the following key considerations before deciding whether to accept a developer's offer of a planning agreement:

- Can the public infrastructure that is proposed to be funded by a development contribution be provided within a reasonable time?
- What will be the impact of the proposed development contribution on the affordability of the proposed development?
- Is the proposed development contribution based on a reasonable apportionment between existing demand and

new demand for public infrastructure to be created by the proposed development to which the contribution relates?

- Is the proposed development contribution based on a reasonable estimate of the cost of proposed public infrastructure?
- Are the estimates of demand for each item of public infrastructure to which the proposed development contribution relates reasonable?

## **4.2 Probity Issues**

To maximise fairness and transparency and minimise abuse of the planning agreements system Council will:

- Ensure that intending parties to planning agreements (and their representatives) and the wider community understand the planning agreements system and the Council's role in the system;
- Notify proposed planning agreements in accordance with the Act and Regulation;
- Avoid the potential for corrupt behaviour by creating a framework of appropriate delegations and separation of responsibilities in considering development applications that involve planning agreements;
- Ensure that Councillors and Council staff understand their varied roles, some of which have the potential to conflict;
- Take steps to ensure that conflicts of interest are avoided or ameliorated. Strategies that may be used to achieve this objective include engaging third parties to assess proposals where Council has a commercial interest and avoiding any contractual arrangement which purports to guarantee outcomes that are subject to separate regulatory processes; and
- Ensure that modifications to approved development the subject of a planning agreement be subject to the same scrutiny as the original development application.

## **4.3 Notification and Public Involvement**

All proposed planning agreements will be publicly notified in accordance with the requirements of the Act and Regulation. These requirements include the exhibition of both the proposed agreement and the explanatory note and a minimum period of public exhibition is 28 days.

The Council encourages the public to make submissions on proposed planning agreement. Public comments allow the Council to better understand local needs and facilitate fine tuning of the planning obligations set out in the agreement.



The Council will publicly renotify and make available for public inspection a proposed planning agreement and the application to which it relates if, in the Council's opinion, a significant reduction to the public benefit provided is proposed in terms of the agreement or the application after it has been previously publicly notified and inspected.

Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the agreement or the application, or their formal consideration by the Council.

Planning agreements that have commenced and the developments to which they relate may be the subject of an application to modify a development consent. Council will generally require a new or modified planning agreement to be prepared and exhibited concurrently with the application to modify the development consent where such modification materially affects the terms of the commenced agreement. A modified planning agreement will be publicly exhibited and considered by Council in the same way as a new planning agreement.

#### **4.4 Register of Planning Agreements**

Council will keep a register of all planning agreements applying to land within its area, including agreements that the Council is not a party to. The register will record the date an agreement was entered into and a short description of the agreement, including any subsequent amendments.

Council will make available for public inspection during ordinary office hours:

- The planning agreement register;
- Copies of all planning agreements (and any amendments) that apply to land within the Kiama LGA; and
- Copies of explanatory notes relating to those agreements or amendments.

## **5. Administration and Implementation of Planning Agreements**

### **5.1 Standard form Planning Agreement**

In order to streamline preparation, Council will use a standard form planning agreement as a basis for drafting all agreements that it is a party to.

The standard form planning agreement is the template planning agreement prepared by the Department of Planning. A copy of this document is attached to Appendix A of this Policy.

### **5.2 Council's costs of Negotiating, Entering into, Monitoring and Enforcing a Planning Agreement**

Council will generally require all planning agreements to make provision for payment by the developer of Council's costs of and incidental to negotiating, preparing, entering into and enforcing the agreement.

However, where the Council considers that the planning agreement will deliver substantial planning benefits to the wider community and not just the users of the development, Council may remove or reduce this requirement.

### **5.3 Pooling of Development Contributions**

Pooling of all of development contributions funds under Council's control may be appropriate to allow public benefits to be provided in a fair, equitable and timely way.

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

### **5.4 Exclusion of Direct and Indirect Contributions**

All planning agreements shall specify whether direct (Section 94) contributions or indirect (Section 94A) contributions apply in respect to the development the subject of the planning agreement.

Council has no general policy on whether a proposed planning agreement should exclude the dedication of land or the payment of monetary contributions that would be required for a proposed development under the direct or indirect contributions plan. However, the following requirements apply in either case:

- Where requirements for direct and indirect contributions are excluded from consideration in the planning agreement, the total monetary value of the public benefits contained in the planning agreement are to be greater than the value of the direct or indirect contributions that the Council could otherwise impose on the development.
- Where the direct and indirect contributions are not excluded by a planning agreement, the Council will not agree to a provision allowing benefits under the planning agreement to be taken into consideration when determining direct and indirect contributions it may impose on the development.

### **5.5 Provision of Security under a Planning Agreement**

The Council will generally require a planning agreement to make provision for security to cover the developer's obligations under the agreement. The form of security will generally be an unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's contributions under the Agreement and on the terms otherwise acceptable to the Council.

### **5.6 General Requirements Relating to the Provision of Works Under a Planning Agreement**

The Council will require provisions addressing the following matters be inserted in a planning agreement protecting the public interest in relation to the construction or carrying out of any works required to be carried out by the developer in included in this agreement.

The developer will carry out any works obligations under a planning agreement:

- Having due regard to public safety and the rights of the public;
- Having due regard to the requirements of any relevant public authority or utility provider;
- Without interrupting or disturbing the traffic or pedestrian flow on any road without first obtaining the written consent of the Council;
- Permitting the Council or any other person authorised by the Council to enter and inspect any construction work carried out or being carried out; and
- In accordance with all relevant development consents and all Australian Standards applicable to works of the same nature as the Works.

If the developer fails to satisfactorily complete the works by the relevant date or threshold identified in the planning agreement then:

- Council may call on the security established to cover the developer's obligations under the agreement, to enable Council to complete and/or rectify the works; and
- Should the security be insufficient to complete and/or rectify the works then the Council may claim the reasonable cost of completing the works as a debt in any court of competent jurisdiction. The cost shall be assessed as at the time the works are carried out.

**5.7 Valuation of Works, Land or other Material Public Benefits Included in Planning Agreements**

The value of any works, land or other material public benefit offered in a planning agreement will be assessed as follows.

If the offered works or land are contained in a contributions plan that has been adopted by the Council and that plan is in force, the value of the works or land will be the value identified in that plan, as indexed in accordance with the provisions of that plan.

If the offered works are not contained in a contributions plan, or the offer constitutes another type of public benefit, the value of the works or public benefit will be the value of the completed works or public benefit as assessed by a qualified quantity surveyor, civil engineer or other appropriate professional engaged by the Council as part of the planning agreement negotiation.

If the offered land is not contained in a contributions plan, the value of the land will be the value assessed by a registered land valuer engaged by the Council as part of the planning agreement negotiation.

All costs associated with the valuation of public infrastructure to be included in a planning agreement by other professionals will be met by the developer.

**5.8 Indexation of Monetary Contributions Required under Planning Agreements**

Monetary contributions required under a planning agreement shall be indexed in the manner specified in the planning agreement.

The general formula for increasing the amount of monetary contributions specified in the agreement from the date the agreement commences to the date the contribution is due to be paid under the agreement is as follows:

$$A = B \times \frac{C}{D}$$

Where:

- A is the indexed amount;
- B is the relevant amount as set out in the planning agreement.
- C is the index most recently published before the date of the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D Is the index most recently published before the date that the planning agreement commenced.

For the avoidance of doubt, if A is less than B, then the relevant amount will not change.

### **5.9 Credits and Refunds**

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

### **5.10 Notations on Certificates under Section 149 of the Act**

The Council will generally require a planning agreement to contain an acknowledgement by the developer that the Council will make a notation under Section 149(5) of the Act about a planning agreement on any certificate issued under Section 149(2) of the Act relating to the land the subject of the agreement or any other land.

### **5.11 Notations on Land Title**

The Council may require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement on the land title pursuant to Clause 24 of Schedule 1 of the Act if the requirements of that Clause are satisfied.

Where Council requires such a provision, Council will not object to a provision allowing the notation of the planning agreement on the land title to be removed, but such provision shall only operate when the developer has satisfied all its obligations under the agreement.

### **5.12 Modification or Discharge of Developer's Obligations under a Planning Agreement**

Council may agree to a provision in a planning agreement permitting the developer's obligations under that agreement to be modified or discharged where the modification or discharge is linked to one or more of the following circumstances:

- The developer's obligations have been fully carried out in accordance with the agreement;
- The developer has assigned the developer's interest under the agreement in accordance with its terms and the assignee has become bound to the Council to perform the developer's obligations under the agreement;
- The development consent to which the agreement relates has lapsed.
- The implementation of the planning agreement has been frustrated by an event beyond the control of the parties;
- Other material changes affecting the operation of the planning agreement have occurred; and
- The Council and the developer otherwise agree to the modification or discharge of the agreement.

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

A planning agreement may be modified or revoked by further agreement in writing and signed by the parties to the agreement (including by means of a subsequent planning agreement).

### **5.13 Dispute Resolution**

A planning agreement will specify a procedure to be followed in the event of any dispute arising from the implementation of an agreement.

Council will require a planning agreement to provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

### **5.14 Assignment and Dealings by the Developer**

Council will require every planning agreement provided that the developer may not assign its rights or obligations under the agreement nor have any dealing in relation to the land the subject of the agreement unless:

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