

### **ITEM 5.1                      Amendment of Voluntary Planning Agreement Policy**

**AUTHOR                      Planning**

#### **PURPOSE AND BACKGROUND**

The purpose of this report is to seek Council's endorsement to exhibit proposed amendments to the Voluntary Planning Agreements Policy. Voluntary Planning Agreements (VPAs) are negotiated agreements between Council and developers for the provision of land, contributions, and other public benefits. Most commonly, VPAs are used for infrastructure provision arising from a development application or planning proposal.

#### **ISSUE**

Council adopted the Voluntary Planning Agreements Policy at the Ordinary Meeting of 28 February 2017. It replaced the VPA Policies of the two former Councils.

While the policy is generally operating well, a number of amendments are now considered to be necessary to ensure the policy operates effectively and also reflects recent legislative changes. An internal audit undertaken in November 2018 has also identified the need to amend administrative aspects of the policy.

#### **RECOMMENDATION    That –**

1. Council exhibit the proposed amendments to the Voluntary Planning Agreements Policy as outlined in this report.
2. A further report be submitted to Council after the conclusion of the public exhibition period.

#### **ATTACHMENTS                      [Click here for attachment](#)**

- A. Draft Amended VPA Policy

## **POLICY IMPACT**

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The recommendations are seeking amendment to Council's existing VPA Policy.

## **FINANCIAL IMPACT**

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The recommendations will enable Council to be more effective in seeking cost recovery when negotiating Planning Agreements.

## **COMMUNITY IMPACT**

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The recommendations will make a number of changes to Council's VPA Policy aimed at making the policy simpler and more transparent for all users.

## DETAILED INFORMATION

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### Background

Council adopted the Voluntary Planning Agreements Policy at the Ordinary Meeting of 28 February 2017. It replaced the VPA Policies of the two former Councils.

While the policy has been generally operating well the following three events have triggered the need for an update:

1. Council staff have identified in the process of negotiating and implementing VPAs that fine tuning of controls would be beneficial. This is particularly in relation to registration on title, and cost recovery.
2. An internal audit of the current policy based on the Independent Commission Against Corruption's Development Assessment Internal Audit Tool has identified the need to amend certain administrative aspects of the policy.
3. Amendments made to the Environmental Planning and Assessment Act 1979 require amendments to the policy to reflect these changes.

The key changes that are proposed are outlined below. A full set of marked up changes are shown on the attached document.

### Council staff initiated changes

#### Indexing of car parking rate (Clause 1.8)

##### *Issues*

The current policy has a contribution rate for car parking contributions that is out of date. This applies when there is a shortfall of car parking spaces in a development, however the policy does not specify in what localities these contributions apply. Also these rates are indexed, but the policy is silent on what indexation is applied when Consumer Price Index (CPI) is negative.

##### *Comment / background*

The current rate in the policy is out of date as it reflects that applicable when the policy was first adopted. While the policy allows for indexation of this rate, it is appropriate for the revised policy to have an up to date amount.

##### *Recommended Action*

The contribution amount for car parking be amended in line with the Consumer Price Index from \$32,476.35 to \$34,272.63. Clarification about the situation with negative CPI growth is also included to state that negative indexing will not occur in line with the former Bankstown contributions plan. The plan will also specify that these contributions apply in Bankstown CBD, Chester Hill Village Centre and Sefton Small Village Centre only.

#### Valuing public benefits (Clause 2.5)

##### *Issue*

This relates specifically to valuation of land that is to be provided as a public benefit.

*Comment / background*

While the policy currently requires the Developer to provide a written valuation, it does not provide for Council to also source its own valuation to be reimbursed by the developer. It is essential that Council has the ability to obtain its own valuation of a property's value.

*Recommendation Action*

Amend the policy so that Council can also source its own valuation. The cost of the value is to be reimbursed by the developer.

Development Feasibility (Clause 2.7)

*Issue*

This clause allows that development contributions and security obligations agreed to in a VPA to be modified, reduced or postponed if the developer can demonstrate that they will adversely impact on development feasibility.

*Comment / background*

VPAs are voluntary and if feasibility is an issue, a VPA should not be entered into. This clause allows for a problematic process where a developer can start submitting feasibility analysis which will delay the process and can require Council undertake further work to validate any analysis provided.

*Recommended Action*

This clause be deleted.

Completion and delivery of works (Clause 2.18)

*Issue*

This clause currently requires the developer give not less than four weeks written notice of the date when it will complete works under a VPA.

*Comment / background*

There may be circumstances where Council requires additional time and for certainty, requires greater specificity on notification.

*Recommended Action*

Amend the policy to state that the written notice be four weeks or as otherwise agreed, to provide flexibility in this area.

Delivery of works-as-executed plan (Clause 2.20)

*Issue*

This clause currently requires that a full works-as-executed plan be provided by the developer to Council within four weeks of works being completed.

*Comment / background*

It is appropriate that a full works-as-executed plan be provided to Council as part of the works handover. This will allow for the completed works to be checked as quickly as possible.

*Recommended Action*

Amend this clause to require a full works-as-executed plan be provided to Council as part of the works handover.

Dedication of land (Subclause 2.22.2)

*Issue*

The policy requires VPAs to legally recognise land dedications that benefit Council. However, the policy not extend to other forms of public benefits such as easements or right of ways over private land.

*Comment / background*

Landowners who are impacted by the public benefits such as easements required in a VPA should also be a party to the agreement because it can impact on the value and use of their land.

*Recommended Action*

Amend the policy to require landowners to be a party to a VPA where there are public benefits involved.

Registration on title (Clause 2.24)

*Issue*

Enforcing registration on title. The policy does not provide sufficient enforcement to ensure registration of the VPA on title will occur when required. Often developers are either reluctant or tardy in fulfilling this obligation. Enforcement consumes staff time and legal resources.

*Comment / background*

The importance of registration on title is that it alerts any prospective purchasers of a site of the existence of a VPA. The VPA ordinarily requires that any new purchaser take on its obligations.

*Recommended Action*

Amend the policy so that registration on title will be a precondition to a development consent operating (such as through a deferred commencement condition) or to gazettal of a planning proposal.

Preparation and form of a Planning Agreement (Clause 3.2)

*Issue*

Council has responsibility for preparation of a Planning Agreement not the developer.

*Comment / background*

There is no legislative requirement as to who prepares a VPA provided that it is agreed between both parties. However it is preferable for preparation to be the developer's responsibility in order to reduce pressures on Council and place the obligation on the developer to provide.

#### *Recommendation Action*

Amend the policy to require VPA preparation as the developer's responsibility. To assist in this it is proposed to provide VPA templates on the Council website.

#### Cost recovery (Clause 3.4)

##### *Issue*

This clause enables Council to seek recovery of its costs of negotiating, entering into, monitoring, and enforcing a VPA. However it could be more comprehensive and enforceable.

##### *Comment / background*

Since the policy has been in operation there have been difficulties in obtaining cost recovery when sought from developers prior to or after entry into the VPA. Often VPAs can also entail considerable staff costs, the recovery of which are not covered by the policy. Being able to recover staff costs is a legitimate source of cost recovery and provides for more effective staff resourcing.

##### *Recommendation Actions*

Amend the policy to require any of Council's costs borne before the VPA is entered to be paid before or at the time of entry. This will provide certainty about the timing of payment and provide enforcement for payment to be made.

A further proposed amendment is to include recovery for costs by Council borne after the VPA is entered into. These will require payment within 14 days of an invoice being issued by Council. This includes costs of registering and removing registration of the PA from title.

#### **Changes initiated by Council's internal audit**

#### Review date (new Clause 1.9)

##### *Issue*

The internal audit has noted the policy contains no specified timeframe for reviews of the policy to take place.

##### *Comment / background*

The internal audit recommends a regular review period of one year to ensure the Policy remains up to date and in line with Council expectations.

##### *Recommendation Action*

The yearly review requirement has been included as new Clause 1.9.

#### Valuing public benefits (Clause 2.5)

##### *Issue*

Clause 2.5 of the policy includes the following requirements:

*Where a VPA provides for the carrying out of works, the value of the works for the purposes of the VPA will generally be the reasonable design and constructions costs agreed to by the Council. The Council may require the Developer, at its cost, to provide the Council with a written opinion on the estimated cost of completion of the works by a*

*suitably qualified and experienced quantity surveyor. Council may in its discretion and at the Developer's cost, have any estimated cost of completion provided by the Developer reviewed by an independent quantity surveyor.*

The internal audit has noted the right to request a quantity surveyor's (QS) report is discretionary and there are no guidelines stipulating the circumstances under which such estimate is required.

*Comment / background*

This situation may lead to inconsistent approaches being adopted which may be perceived as being unfair or may result in reduced transparency in the management of VPAs.

*Recommendation Action*

Amend the policy to require a QS report be undertaken whenever works are being provided in the VPA. Council may choose to undertake an independent review of the QS report. This remains at Council's discretion.

Works in Kind (New clause 2.34)

*Issue*

Council does not have a policy regarding works in kind, which includes works carried out by developers in lieu of payment of contributions such as the construction of a new road. The internal audit noted that in the absence of a policy/policy statement regarding Councils position on works in kind there is an increased risk (perceived or otherwise) that offers will are not dealt with in a consistent and transparent manner.

*Comment / background*

Works in kind offers are rare in Canterbury Bankstown and can also be dealt with through the VPA process. The main difference between works in kind agreements and VPAs is that while a VPA can include works in kind, it covers other works and public benefits as well. An advantage of the VPA process is that there are legal parameters and consultation requirements in place offering greater transparency than works in kind agreements, which do not require public exhibition.

*Recommendation Action*

Amend the policy to state that works in kind requests will be dealt with through the VPA process.

Refunds (New clause 2.35)

*Issue*

The internal audit notes that while the VPA policy addresses contributions plan credits it does not specifically address refunds. Requests for refunds may arise for various reasons and would include the request for reimbursement of costs by developers.

The audit recommends that it would be beneficial to document Councils position on refunds in the VPA Policy to ensure that in the event requests for refunds arise, they are dealt with in a transparent and consistent manner.

#### *Comment / background*

The former Bankstown contributions plan has provision for refunds, and it is intended to include these in the former Canterbury contributions plan.

#### *Recommendation Action*

A new clause is recommended in the policy advising that the circumstances where refund may be permitted include:

- Where a development is no longer proceeding (the consent is lapsed or withdrawn).
- Where a development is modified to be smaller in scope.
- Where a planning proposal does not eventuate.
- Where the VPA allows for a refund.

### **Changes arising from changes to the Environmental Planning and Assessment Act 1979**

#### *Issues*

Amendments to the Environmental Planning and Assessment Act 1979 include restructuring and changing the referencing of clauses. Voluntary Planning Agreements are also now known in the Act as Planning Agreements.

#### *Comment / background*

The policy contains out of date referencing and it is appropriate to bring it in line with updated legislation. Out of date referencing now exists extensively throughout the policy.

#### *Recommendation Action*

Update the policy to reflect the new referencing, and to refer to the policy as the Planning Agreements Policy.

#### Further steps

Should Council endorse the draft amendments to the policy, it is intended that it be placed on public exhibition for a 28 day period to allow public comment on the proposed amendments. It will then be reported back to Council with an assessment of any submissions received and a recommendation on next steps.



**CANTERBURY BANKSTOWN**  
**MINUTES OF THE**  
**ORDINARY MEETING OF COUNCIL**  
**HELD IN COUNCIL CHAMBERS**  
**ON 25 JUNE 2019**

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2. Council support the request from Auskick for their 8 week Auskick program and waive the field hire fee at Roberts Park in the amount of \$656.
3. Council support the request from Ms Rhea Baweja who will be participating in the YMCA NSW Youth Parliament and donate \$500 towards her attendance.
4. Council support the request from Riverwood Squadron of the Australian Air League and donate \$2,000 towards their participation in the Pearl Harbour Memorial Parade held in Hawaii.
5. Council support the request from Padstow Community Care's Winter Appeal and donate \$250 to provide counselling and goods, including food hampers to those in need.
6. Council support the request from Stars of Sydney Southwest who are holding a fundraising event for the Cancer Council Australia and donate \$500.
7. Council support the request from Canterbury Bankstown Tennis Association and purchase one copy for each of our libraries of their history book "Canterbury Bankstown Tennis Association a Century of Achievement" at a total cost of \$360.
8. Council support the request from the Vietnamese Community in Australia NSW Chapter who held a candlelight vigil in commemoration of World Refugee Day at the Boat People Monument in Bankstown and waive the park hire fee of \$146.

- CARRIED

CLRS ZAMAN, HUDA AND HARIKA RETURNED TO THE CHAMBER AT 6.21 PM.

**SECTION 5:**

**PLANNING MATTERS**

**ITEM 5.1**  
**(606)**

**AMENDMENT OF VOLUNTARY PLANNING AGREEMENT POLICY**  
**CLR. MADIRAZZA:/CLR. ZAKHIA**

RESOLVED that

1. Council exhibit the proposed amendments to the Voluntary Planning Agreements Policy as outlined in this report.
2. A further report be submitted to Council after the conclusion of the public exhibition period.

- CARRIED

**CANTERBURY BANKSTOWN**  
**MINUTES OF THE**  
**ORDINARY MEETING OF COUNCIL**  
**HELD IN COUNCIL CHAMBERS**  
**ON 25 JUNE 2019**

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For:- Clrs Asfour, Kuskoff, El-Hayek, Raffan, Zakhia, Downey, Huda, Zaman, Madirazza, Harika, Tuntevski and Waud  
Against:- Nil

**ITEM 5.2 EXHIBITION OF VOLUNTARY PLANNING AGREEMENT FOR 280 CHAPEL ROAD, BANKSTOWN**

**(607) CLR. TUNTEVSKI:/CLR. ZAKHIA**

RESOLVED that

1. Council enter into the voluntary planning agreement as shown in Attachment A.
2. The General Manager be given authority to make minor administrative changes to the document that may be required for the purposes of execution, so long as these do not alter the intent or substance of the voluntary planning agreement.

- CARRIED

For:- Clrs Asfour, Kuskoff, El-Hayek, Raffan, Zakhia, Downey, Huda, Zaman, Madirazza, Harika, Tuntevski and Waud  
Against:- Nil

**ITEM 5.3 DRAFT COMMUNITY PARTICIPATION PLAN**

**(608) CLR. WAUD:/CLR. TUNTEVSKI**

RESOLVED that

1. The draft Community Participation Plan and the associated draft changes to the Bankstown DCP 2015 and Canterbury DCP 2012 be exhibited for a period of at least 28 days.
2. A report be brought back to Council addressing any submissions, recommending any amendments and seeking endorsement to implement the CPP.

- CARRIED

For:- Clrs Asfour, Kuskoff, El-Hayek, Raffan, Zakhia, Downey, Huda, Zaman, Madirazza, Harika, Tuntevski and Waud

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