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## Report of the General Manager - 25 October 2016

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### **ITEM 6.6                      Draft Voluntary Planning Agreement Policy**

**AUTHOR                      City Planning**

### **ISSUE**

A new Voluntary Planning Agreement Policy has been prepared for the City of Canterbury-Bankstown to reflect contemporary industry standards. This Policy, once endorsed, will replace existing policies at the former councils.

This report seeks Council's resolution to exhibit the Draft Voluntary Planning Agreement Policy.

### **RECOMMENDATION    That -**

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1.    The Draft Voluntary Planning Agreement Policy at Attachment A be placed on public exhibition for a period of 28 days.
2.    The matter be reported back to Council following the public exhibition.

### **BACKGROUND**

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A new Draft Voluntary Planning Agreement Policy has been prepared to replace the two existing policies applicable at the former Bankstown and Canterbury Council areas.

The draft policy follows best practice to outline Council's negotiation process when a developer offers to provide works-in-kind or monetary contribution or build community infrastructure as part of a development application or a planning proposal. The draft policy supports the legal framework and mandatory provisions for Voluntary Planning Agreements in accordance with the Environmental Planning & Assessment Act 1979 (the Act) and Environmental Planning & Assessment Regulation 2000 (the Regulation). The draft policy provides certainty and transparency for the community and the developers on Council's negotiation process.

This report provides an overview of the Voluntary Planning Agreement framework and an overview of the Draft Voluntary Planning Agreement Policy.

# REPORT

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## VOLUNTARY PLANNING AGREEMENTS AND LEGAL FRAMEWORK

A Voluntary Planning Agreement is a legally binding contract between a developer and Council that outlines the developer's offer to make contributions towards a public purpose as part of a development application or a planning proposal. Subdivision 2 of Division 6 of the Environmental Planning and Assessment Act 1979 outlines the legal framework of voluntary planning agreements and Division 1A of Part 4 of the Environmental Planning and Assessment Regulation 2000 provides further procedural framework.

The Act defines a 'public purpose' to include (without limitation) the provision of public amenities or public services, affordable housing, transport and other infrastructure, monitoring of development impacts, and the conservation or enhancement of the natural environment.

The Act allows VPAs to be entered into in connection with:

- planning proposals,
- development applications, and
- modification applications.

The Act outlines the following key provisions when preparing a voluntary planning agreement:

- A VPA must be based on the developer's offer to provide or contribute towards a public purpose. Council cannot mandate a VPA to be prepared as a pre-condition in determining a development application.
- The obligations in a VPA does not have direct relations to the proposed development but must provide a public purpose.
- A VPA can be prepared in addition or in place of Section 94 or Section 94A contributions.
- A VPA can only be executed after it is publicly exhibited for a minimum 28 days.
- A VPA may be registered on the land title.

## DRAFT VOLUNTARY PLANNING AGREEMENT POLICY

The draft Voluntary Planning Agreement (VPA) Policy is not a legally binding policy, however, the draft policy intends to deliver a practical guide for both Council and developers to deliver consistent agreements in a transparent manner. It also seeks to assist the community in understanding the considerations and the steps involved in developing VPAs.

Both the former Bankstown and Canterbury City Councils currently have separate Voluntary Planning Agreement Policies. The council amalgamation is an opportune time to improve the current processes and to develop a new draft policy that will apply to the merged local government area. The new draft policy has been prepared by Council's lawyers as shown in Attachment A.

### Overview of the Draft VPA Policy

In addition to the statutory requirements in the Act and the Regulation, the draft policy provide direction on the following key themes:

## **1. Circumstances when Council will consider a VPA**

The draft policy expands on the Act's definition of a 'public purpose' by providing additional public benefits that Council would consider when preparing a VPA:

- Compensate for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration,
- Meet the demands created by development for new public infrastructure, amenities and services,
- Address a particular deficiency or deficiencies in the existing provision of public facilities in the Council's area,
- Achieve recurrent funding in respect of public facilities,
- Prescribe inclusions in the development that meet specific planning objectives of the Council,
- Monitor the implementation of development, and
- Secure planning benefits for the wider community.

## **2. Provisions to prepare and operate a VPA**

The draft policy outlines provisions to operate a legally binding agreement, which includes monitoring the performance of the agreed works, resolving disputes, determination of security for the agreed works, and registering the VPA.

Further the draft policy requires the developer to pay for all costs associated in preparing and drafting the VPA, including Council's legal fees and the agreed specialist studies to support the obligations within the VPA.

## **3. Negotiation process**

The draft policy outlines the negotiation process for the relevant application types:

- For planning proposals – Any VPAs made in connection with a planning proposal, the planning proposal will generally be conditional on the execution of the VPA by the proponent. Council will request the Minister for Planning to require a draft VPA to be publicly notified and entered into before amendments are made to environmental planning instruments, or to await the execution of a VPA prior making a decision.
- For development applications – Any VPAs made in connection with a development application will generally require pre-lodgment discussions with council officers, and the draft VPA to accompany the DA lodgment.

Further, the draft policy includes provisions on the involvement of independent third parties in the negotiation process.

## **4. Probity**

The Draft VPA Policy seeks to protect the VPA and negotiation process from conflict of interest by including the following provisions:

- Councillors will not be party to the preparation or negotiations of any VPAs.
- When Council has commercial interest in a development that is subject to the VPA, Council will ensure that the staff assessing the application is not the same person who represents Council as a landowner, developer or financier who is negotiating the commercial terms.

## **INTERNAL PROTOCOL**

To support the draft policy, an internal protocol is proposed to be developed to outline the responsibilities for Council staff. The internal protocol will determine the processes for staff from the start of the process with the receipt of a VPA offer through to the completion of the obligations of the VPA at the end of the process.

## **NEXT STEPS**

The internal protocol of Council will be prepared to support the draft VPA policy.

Following best practice, the draft VPA policy will be placed on exhibition for a minimum 28 days. The matter will be reported back to Council following the exhibition and all submissions will be considered.

## **POLICY IMPACT**

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This matter has no policy impact.

## **FINANCIAL IMPACT OF RECOMMENDATIONS**

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This matter has no financial impact.

## **RECOMMENDATION** That -

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1. The Draft Voluntary Planning Agreement Policy at Attachment A be placed on public exhibition for a period of 28 days.
2. The matter be reported back to Council following the public exhibition.

## **ATTACHMENTS**

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- A. Draft Voluntary Planning Agreement Policy