



# Planning circular

## PLANNING SYSTEM

Practice note amendment

<b>Circular</b>	PS 21-001
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<b>Related</b>	nil

## Improving planning agreements

This circular is to advise planning authorities that the Department has prepared a policy framework on planning agreements, which clarifies key principles and provides additional guidance on their use. The framework includes an updated planning agreements practice note and new clauses in the *Environmental Planning and Assessment Regulation 2000* requiring planning authorities to consider any relevant practice note.

### Background

In April 2020, the Minister for Planning and Public Spaces announced that the Department would begin a series of system improvements to the NSW infrastructure contributions system. This would support the NSW Productivity Commission's holistic review of infrastructure funding in NSW.

As part of the series of system improvements, a policy framework on planning agreements was placed on public exhibition and subsequently finalised.

### Overview of the framework

The policy framework on planning agreements will improve the use of planning agreements in the planning system and encourage better strategic infrastructure planning. The policy framework includes:

- A Secretary's Practice Note on Planning Agreements
- Amendments to the *Environmental Planning and Assessment Regulation 2000*

The policy framework acknowledges the benefits of planning agreements and covers key principles including that:

- Planning agreements must be underpinned by proper strategic infrastructure planning.
- There must be a relationship between the public benefit provided by the infrastructure the developer is to provide under the planning agreement and the proposed development.
- A council cannot require a planning agreement in order to progress a planning proposal.

The Secretary's Practice Note on Planning Agreements replaces previous advice on planning agreements found in the *Development Contributions Practice Notes – July 2005*. It discusses the purpose and rationale for planning agreements and outlines fundamental principles and policy considerations around their use.

The inclusion of a new clause in the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) will require councils to consider the practice note when negotiating or entering a planning agreement. All planning authorities will be required to consider the practice note in preparing an explanatory note which has been transferred from the EP&A Regulation to the practice note.

### Appropriate use of planning agreements

Planning agreements are used widely in the planning system as a tool for delivering innovative or complex infrastructure and public benefit outcomes in connection with planning proposals or development applications.

Planning agreements can complement other contribution mechanisms and can deliver the kinds of infrastructure provided through these mechanisms, as well as broader public benefit outcomes. However, planning agreements should not be used as de facto substitutes for contributions plans.

The practice note provides guidance around when it is appropriate to use planning agreements as well as the procedures for negotiating, entering into and administering planning agreements.

It reiterates that a developer may offer to enter into a planning agreement with a planning authority and this offer must be voluntary. The procedures for negotiating and entering into planning agreements should be identified by the planning authority and made clear to developers.

Planning agreements need to provide a public benefit that has a clear link to the development and should not be wholly unrelated.

### Strategic infrastructure planning and planning agreements

Strategic planning can occur at different scales including site, precinct or local government area wide. Infrastructure and public benefit are planned and delivered more transparently, efficiently and equitably

when linked to strategic planning, rather than determined on a site-by-site basis.

In areas experiencing major growth, it is appropriate that infrastructure planning, including contributions planning, takes place concurrently to the rezoning process. This enables the cost of growth infrastructure to be fairly apportioned, encourages confidence in the planning system, and reduces the need for ad hoc or reactive infrastructure solutions for individual developments.

Where strategic planning has been undertaken and infrastructure requirements appropriately assessed, planning agreements can be used to deliver this infrastructure.

To ensure a planning agreement reflects a clear link to strategic infrastructure planning, councils should prepare and maintain a planning agreement policy. The practice note provides guidance on what should be included in a planning agreement policy and what a council should consider.

## Value capture and planning agreements

The practice note details policy considerations for value capture and planning agreements. This includes clarifying that value capture should not be the primary purpose of a planning agreement and that benefits offered under a planning agreement do not make unacceptable development acceptable.

## Explanatory notes for planning agreements

Planning agreements are required to be accompanied by an explanatory note, which is a plain English guide to assist the community to understand what a planning agreement is proposing to do.

The practice note provides updated guidance on the requirement for planning agreements to be accompanied by an explanatory note. It also includes a simplified explanatory note requirements which have been transferred from the EP&A Regulation.

## Mining projects

The Secretary's Practice Note on Planning Agreements does not apply to planning agreements for mining projects. However, councils and proponents can refer to Parts 1, 4 and 5, for guidance on use, process and governance, which is appropriate for all planning agreements.

## Transitional arrangements

The Secretary's Practice Note on Planning Agreements applies to planning agreements which were under preparation, but not yet exhibited, at the date of an amendment to the *Environmental Planning and Assessment Regulation 2000*.

Planning agreements that were publicly notified under s7.5 of the EP&A Act but not finalised before this date are not required to have regard to the Practice Note. However, planning authorities may consider the Practice Note when finalising these planning agreements.

## Further information

The Ministerial Direction on Planning Agreements is available at: [planning.nsw.gov.au/planning-agreements](http://planning.nsw.gov.au/planning-agreements)

The Secretary's Practice Note on Planning Agreements is available at: [planning.nsw.gov.au/planning-agreements](http://planning.nsw.gov.au/planning-agreements)

The amendment to the *Environmental Planning and Assessment Regulation 2000* is available on the [NSW Legislation website](http://www.nsw.gov.au/legislation/legislation-website).

For further information please contact Service NSW on 13 77 18.

Department of Planning, Industry and Environment circulars are available at:

[planning.nsw.gov.au/circulars](http://planning.nsw.gov.au/circulars)

## Authorised by:

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