Environmental Planning and Assessment (Planning Agreements) Direction 2019

under the Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 7.9 of the Environmental Planning and Assessment Act 1979, give the following Direction.

The Hon. Anthony Roberts MP
Minister for Planning

Dated: 28/2/19

1 Name of Direction

This Direction is the Environmental Planning and Assessment (Planning Agreements) Direction 2019.

2 When Direction takes effect

This Direction takes effect on the date of its publication on the NSW Planning Portal.

3 Planning authorities to which Direction is given

This Direction is given to all local councils as planning authorities within the meaning of Division 7.1 of the Act.

4 Definitions

In this Direction:

affordable housing condition means a condition that may be imposed on development consent, under section 7.32 of the Act, requiring the dedication of land or a monetary contribution for the purpose of providing affordable housing.

affordable housing contribution scheme means a scheme referred to in section 7.32 (3)(b) of the Act set out in or adopted in a local environmental plan.

the Act means the Environmental Planning and Assessment Act 1979.

5 Matters to be considered by councils

(1) This clause applies to a council if it is negotiating the terms of a proposed planning agreement that includes provision for affordable housing in connection with a development application or proposed development application.
(2) The council is to consider:

(a) whether the consent authority for the development application is authorised by a local environmental plan to impose an affordable housing condition on a grant of development consent to the application,
(b) whether it is proposed that the planning agreement provide for affordable housing (including by making a monetary contribution for that purpose) instead of local infrastructure contributions that may be imposed under section 7.11 or section 7.12 of the Act,
(c) whether the development application includes, or will include, development for the purpose of affordable housing,
(d) whether affordable housing (such as a hostel, boarding house or low-rental residential building) on the land subject to the development application will, or has been, demolished,
(e) the terms of any affordable housing contribution scheme for dedications or contributions set out in or adopted by a local environmental plan, and
(f) having regard to the above matters, whether it is reasonable for the planning agreement to include a contribution of the value proposed by the council for the purpose of affordable housing.

(3) Before entering into a planning agreement in connection with the provision of affordable housing, a council must prepare and publish, or otherwise make publicly available, a policy setting out the circumstances to which they may seek to negotiate a planning agreement where the consent authority for development in a local government area is authorised to impose an affordable housing condition.

6 Transitional provision
The Direction does not affect the entry into a planning agreement by a council where negotiations in respect of that planning agreement have commenced before this Direction takes effect.