

State voluntary planning agreements

Process guide

October 2021



Acknowledgement of country

The Department of Planning, Industry and Environment acknowledges the traditional custodians of the land and pays respect to Elders past, present and future.

We recognise Australian Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

Find out more:

www.dpie.nsw.gov.au

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About this process guide

This guide outlines the stages and processes involved in offering to enter into, negotiating and completing a **state voluntary planning agreement (SVPA)** with the Minister for Planning and Public Spaces.

This guide relates to a subset of all planning agreements, specifically, those which the Department of Planning, Industry and Environment is responsible for preparing and administering on behalf of the New South Wales Minister for Planning and Public Spaces. These planning agreements are known as state voluntary planning agreements (also referred to as SVPAs, state planning agreements, voluntary planning agreements, VPAs, or sometimes just planning agreements).

Process overview

About state voluntary planning agreements

A planning agreement is a legal agreement between a developer and a planning authority, such as the Minister for Planning and Public Spaces or a council, outlining certain contributions that the developer will make to support infrastructure delivery. Planning agreements are made under section 7.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act). They are one of several infrastructure contributions mechanisms set out in the EP&A Act by which development contributes to the infrastructure needed to support it.

The [Planning Agreement's Practice Note - February 2021](#) gives more detail on planning agreements more broadly.

The purpose of the contributions

Contributions made under SVPAs help to deliver state and regional infrastructure such as transport infrastructure (public transport facilities and major roads), land for education facilities, environmental or conservation land or management, and biodiversity offsets.

SVPAs give developers an opportunity to deliver a state or regional infrastructure item or items, dedicate land for that purpose and/or to provide monetary contributions for the delivery of infrastructure at a later stage.

The steps in entering into an SVPA

Developers will take one of several pathways through this process, depending on the type(s) and timing of the contribution(s) they choose to make to meet their contribution obligations. The time taken to complete an SVPA depends on the complexity, the number of contribution items, and the number of entities proposed as parties to the SVPA. A timeframe for the completion of an SVPA will be established following initial discussions between the developer and the Department of Planning, Industry and Environment.

A high-level overview of the stages for SVPAs is outlined in Figure 1 overleaf.



Figure 1. High-level overview of the SVPA process

A summary of the individual steps for each stage is outlined below.

When an SVPA is required

SVPAs are entered into when:

1. it is a requirement under an environmental planning instrument, either as a satisfactory arrangements or concurrence clause, and/or
2. a developer (or a person who has entered into an agreement with, or is otherwise associated with a developer) seeks a change to an environmental planning instrument and it is determined that new or upgraded state infrastructure is required to address demand generated by a rezoning.

What contributions are and how they are determined

There are several ways in which a satisfactory contribution toward state or regional infrastructure is determined for the purposes of an SVPA:

- Studies undertaken by the developer – in consultation with the department – that are reviewed by the relevant state agency, which determine the infrastructure demand resulting from a proposed development or planning proposal. From this, specific infrastructure item(s) required to service an apportioned level of demand may be identified.
- Strategic planning and investigation by a state agency may identify infrastructure needs within the development area of a planning proposal. The SVPA may include a contribution toward this identified infrastructure, appropriate to the level of expected demand generated.
- A contribution may also be derived from an analysis undertaken by the department, often in reference to a draft special infrastructure contribution rate. These rates are usually expressed in per dwelling, per gross floor area or per hectare of net developable area terms. This method is used by agreement with the proponent and is generally aimed at achieving fairness, speed, and consistency with adjoining land.

Once infrastructure needs have been determined, there are a range of means to meet an obligation.

These include any or all of the following:

- monetary contributions;
- dedication of land to a public authority for the purposes of state infrastructure; and/or,
- the delivery of state infrastructure. Note the cost of works will be taken into account when considering the entire contribution and may be instead of part of a financial contribution (referred to as ‘works-in-kind’).

An SVPA may contain one contribution type or a combination of these. Other place-specific contribution types may also be considered as part of the negotiation of an SVPA.

The state voluntary planning agreement process



Figure 2. In stage 1, a developer should submit an offer

Stage 1 – Submit an offer

Contacting the department

A developer should contact the department about a development application that requires satisfactory arrangements certification¹ (SAC) or a planning proposal that generates demand for the delivery or augmentation of state infrastructure. Email planningagreements@planning.nsw.gov.au or contact us through the department’s Planning Portal website, www.planningportal.nsw.gov.au

Because the SVPA process includes multiple stages, we recommend that you contact the department as early as possible, with confirmation that the:

- development application has progressed to finalisation stage and the number of new dwellings and/or the net developable area has been resolved, and/or
- planning proposal has progressed to the point where you have consulted NSW Government agencies and they have provided an analysis of the amount of state infrastructure required as a result of a rezoning.

In the case of works-in-kind² (WIK) contributions, the developer must provide evidence that they have consulted with the relevant agencies about the proposed WIK. The Department of Planning, Industry and Environment can assist with this process.

Information and requirements

When we receive an enquiry, the department will respond to the developer or council, outlining:

- if there is a requirement to enter into an SVPA and/or SAC to be issued;
- the process for entering into an SVPA, including the submission of the application through the Planning Portal and the supporting documents and information that will be required;
- options for the timing for making contributions;
- any security arrangements which may be required; and,
- if known, the likely contribution obligation amount.

1 SAC - Certification that confirms the developer has made the infrastructure contribution required under a relevant state environmental planning policy or local environmental plan, development application or application for complying development certificate.

2 WIK - A developer may propose that they make their contribution in the form of one or more works-in-kind (for example, the construction of a road), rather than through monetary contributions or the dedication of land.

Applying through the Planning Portal

When a developer submits the SVPA application via the Planning Portal, the SVPA negotiation process begins. The developer must submit a formal letter of offer³ with the application. Request a template for the letter of offer from the department if required.

This letter of offer must be made to the Minister for Planning and Public Spaces and is taken as a formal request to begin the preparation of an SVPA. The letter of offer will be used as the basis for drafting the SVPA.

The letter of offer should include the following details:

- Details of the proposed development or change to occur to an environmental planning instrument;
- Details of the land (Lot and DP references), ownership details and any possible land transfers or purchase options;
- Proposed parties to the SVPA;
- The type of contribution(s) to be provided – this may take the form of monetary contribution, WIK and/or land dedication;
- Timeframes or development triggers for when the contributions are to be provided;
- Security arrangements;
- Written confirmation of agreement to pay the minister's reasonable costs for the preparation and notification of the SVPA; and,
- Evidence of any requirements of state agencies (if relevant).

Include the following documents with the letter of offer (if applicable):

- Development application (DA) form or form of proposed development;
- Plan of subdivision;
- Statement of environmental effects;
- Copy of trust deed (if any of the parties are trustee companies);
- Copies of land transfers or sale option agreements; and
- Owner's consent (where the developer does not own the land).

The case is then allocated to an Infrastructure Planning Officer to progress.

³ Letter of offer – A letter outlining the developer(s) offer to provide (one or a or combination of) contributions including monetary, land and/or WIK to meet calculated obligations. It may also outline certain triggers for the delivery of items, as well as specific clauses for the VPA. The items and clauses outlined in the initial letter(s) can be negotiated; however, the final agreed letter forms the basis of the draft SVPA.



Figure 3. In stage 2, the department considers the offer

Stage 2 – We consider the offer

Reviewing the letter of offer

Once lodged, the department will review the application, the letter of offer and supporting documents. We may request more information to ensure we have enough detail to consider the offer.

WIK and land valuation (if required)

If any part of the contribution will take the form works-in-kind or land, a NSW Government agency needs to verify the value of these contributed assets.

WIK valuation process

Where the developer has proposed the contribution of a WIK, and no draft special infrastructure contributions (SIC) scheme and infrastructure schedule is in place, the department will confirm that the developer has consulted with state agencies.

If the developer seeks offsets for WIK, the department will consult with the relevant state agency (such as Transport for NSW) about the scope and proposed WIK costs. The department may engage a quantity surveyor or other experts during this process. The costs of such an engagement, if required, will form part of the minister's costs to be reimbursed by the developer.

Land valuation process

If the developer seeks offsets for land dedication, the department and the developer will need to engage valuation advice. When a valuer for the developer and valuer for the department have both provided their valuations:

- if the two land valuations are within 10% of each other, the department can agree to the average of the two values
- if valuations differ by more than 10%, the two valuers will be instructed to engage in non-prejudice discussions to see if an agreed, negotiated value can be determined
- if the above step does not result in an agreement, a third, independent valuer will be engaged. This valuer will receive the land valuations of both parties and consider which methodology and value is most appropriate.

The agreed-upon value or value determined by the independent valuer will then inform the draft SVPA offer that the minister's delegate would be willing to consider. The valuation costs incurred by the department will form part of the minister's costs to be reimbursed by the developer.

Negotiation

The department may seek amendments to the terms of the offer and may negotiate with the developer. This may relate to the timing and nature of contributions and security payments, or specific requirements the developer is seeking. These negotiations continue until both parties are satisfied with the amended terms and agree to progress.

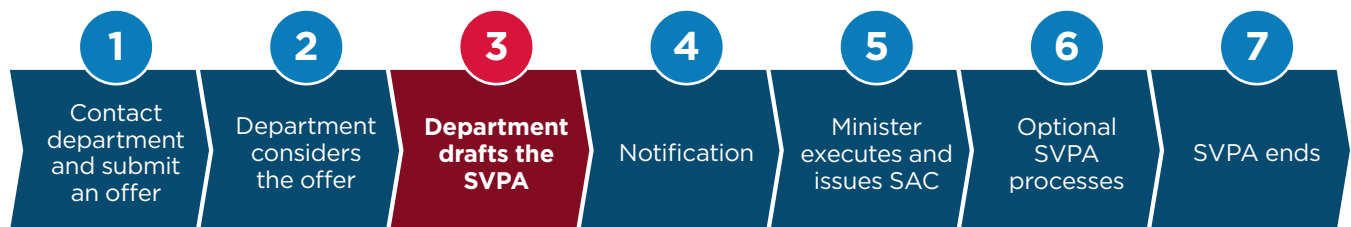


Figure 4. In stage 3, the department drafts the SVPA

Stage 3 – We draft the SVPA

Drafting the SVPA

The department will begin drafting the SVPA based on the key terms and details of the letter of offer and any further discussions or negotiations with the developer. We will also draft an explanatory note⁴ to accompany the SVPA notification. As part of this step, we will undertake land title and company searches to ensure the information provided is sufficient. We may request more information to prepare the legal drafting.

Finalising the draft SVPA

Once complete, we will issue the draft SVPA and explanatory note to the developer for comment. If the developer requests any changes, we will assess these, and if we accept the changes, we will issue a revised draft SVPA and explanatory note to the developer.

To progress the SVPA to notification, we require the developer to sign the same number of copies of the SVPA as there are parties (for example, two copies will need to be signed when there are two parties to the SVPA).

⁴ Explanatory note: A simplified document that sets out the key terms of a planning agreement and which must be exhibited with a planning agreement. More information is in clause 25E of the Environmental Planning and Assessment Regulation 2000

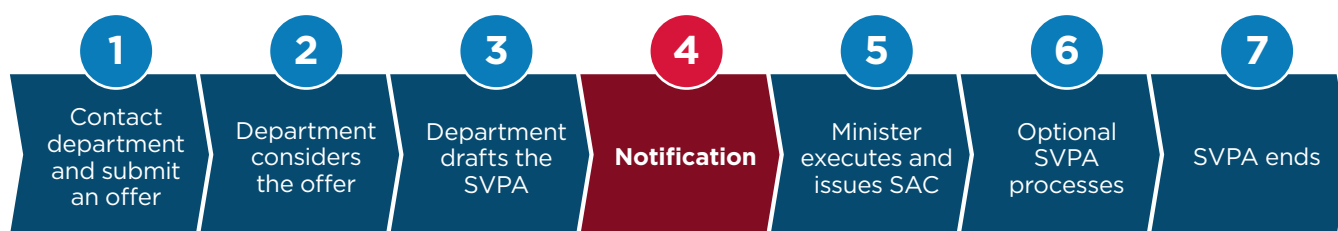


Figure 5. In stage 4, the department notifies the public of planning agreements

Stage 4 – We notify the public

Notification

It is a legal requirement that the department notifies the public of planning agreements for a minimum of 28 days. SVPAs are placed on notification via the department’s Planning Portal website. Certain circumstances may make longer notification periods necessary, such as extended notifications over the Christmas–New Year period. The department will inform the developer and the relevant council of the notification dates.

Review of submissions

The department will review any submissions to the draft SVPA that we receive during the notification period once notification is completed and the SVPA is under consideration.⁵

Registration on title and security (if required)

If required, the developer will need to provide hard copy originals of the documents below before execution of the SVPA. Hard copy originals should be posted to the department.

11R Registration form

The developer is required to provide a completed 11R Registration form. This form enables registration of the SVPA on the title to the land on which the development will be taking place.

Bank guarantee

The department may seek security to ensure that the obligations under the SVPA will be met. In accordance with the security provisions of the SVPA, we may require the developer to provide one or more bank guarantees to the proposed contributions under the SVPA.

Minister’s costs

The department will issue an invoice to the developer for payment of all the minister’s costs incurred in the drafting and notification of the SVPA. This may include legal fees, valuations fees, title and company searches and other searches.

Payment of contribution (if required)

If any part of the contribution is being made in the form of a monetary contribution on execution of the SVPA, the department will issue an invoice to the developer for payment. Once the developer notifies us that they have made a payment, the department will verify this.

⁵ Under consideration: The status of an SVPA after the end of the notification period and before its execution.

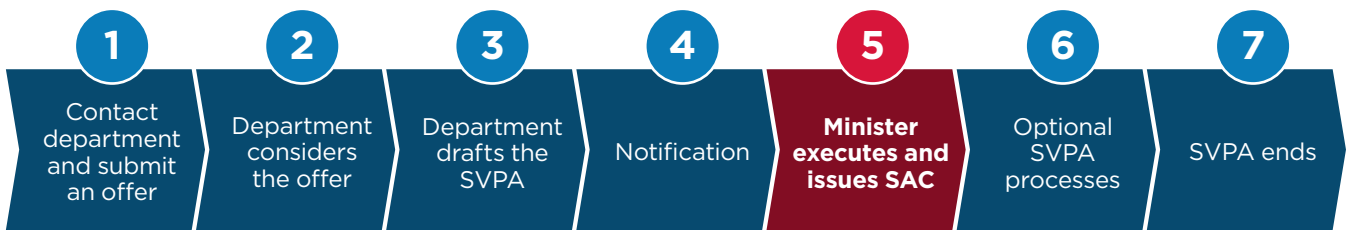


Figure 6. In stage 5, the minister executes and issues SAC

Stage 5 – Minister executes and issues SAC

Execution by the minister

If the department is satisfied that all the above requirements have been met, we will make a recommendation for the SVPA to be executed by the minister.⁶ Once signed, we publish the executed SVPA on the department’s [State Planning Agreements Register](#).

Registration on title (if required)

The developer will receive the executed SVPA and 11R Registration form(s) (if applicable). If required, the developer will need to register the SVPA on the title of the relevant folios with Land Registry Services (**LRS**).

If any part of the contribution is being made after execution of the SVPA, the developer provides proof of registration of the SVPA on title in the form of title and dealing searches from LRS to the department.

Payment of the minister’s costs

The developer must pay the minister’s costs before SAC can be issued. Once the developer notifies us that they have made a payment, the department will verify this.

Issuing of satisfactory arrangement certificate (SAC)

Where SAC is required, unless alternative arrangements have been made, the department will generally require evidence that the:

- SVPA has been registered on the title of the land that is proposed to be developed, and/or
- obligations under the agreement have been met.

Once approved, a SAC is then issued to council or the relevant planning authority.

Contribution delivery triggers

The SVPA will establish the timing for contributions to be paid or delivered by a developer. Triggers for contributions may include:

- a monetary contribution upon the execution of the SVPA;
- monetary contributions due at lot thresholds, being the creation of a certain number of residential lots via subdivision certification. Lot thresholds can reflect the entire development or defined stages. For example, in the instance of staged development, the developer may seek a release for Stage 1 of a three-stage development. In this instance, the developer would pay a contribution for the lots in Stage 1, then undertake the same process for Stages 2 and 3 as development progresses;

⁶ A reference to a minister includes a reference to their delegate under the appropriate delegation.

- delivery of infrastructure or payment of monetary contributions at specific points of the development stage in order to meet forecast demand. For example, requiring the completion of road works before the issuing of the subdivision certificate to create the 100th residential lot or completion of a specific stage of the development. There may be several infrastructure items and types required at different trigger points or stages;
- delivery of infrastructure or payment of monetary contributions based on the timing of external factors such as the delivery of works by a state agency or adjoining developer; and/or,
- recurrent payments, generally annually, as outlined in the SVPA.



Figure 7. In stage 6, there may be optional SVPA processes

Stage 6 – Optional SVPA processes

This includes several optional, extra steps that may be initiated at a developer’s request or as a function of a development application (DA). To initiate one or more of these extra steps, email the department at planningagreements@planning.nsw.gov.au

Monetary contribution invoice

The SVPA will outline the timing for contributions. We will raise and issue invoices for monetary contributions when the developer informs the department that development has progressed to contribution trigger points.

Issue subsequent satisfactory arrangements certificate (SAC)

Subsequent SACs may be requested and are typically required:

- if a developer lodges a second DA for development;
- in staged developments, where a DA is lodged for a subsequent phase of development; or,
- if a developer modifies a DA for development of the site identified in the DA which initiated the original SVPA process.

Subsequent SACs follow the process outlined in Stage 5.

Amendment of SVPA

If a developer requests that an SVPA be amended following execution, the department will consider this request. This process follows the same pathway as the consideration, drafting and notification processes of the initial SVPA (stages 2, 3 and 4).

Novating the SVPA to another party

Where a signatory to an SVPA seeks to assign the obligations or transfer the land (for example, through the sale of the land) to another party not already party to the SVPA, a deed of novation to

the SVPA must be prepared. The developer can initiate this process by emailing the department at planningagreements@planning.nsw.gov.au. The email notice should be followed by a formal letter seeking the consent of the minister to the assignment of obligations and/or transfer of the land.

The letter should include:

- confirmation that the incoming party (or outgoing party, if agreed between the parties) will pay the minister's costs; and,
- the incoming party's contact details.

The following information and documents should be submitted with the formal letter:

- copies of land transfers or sale option agreements;
- confirmation that the incoming party has sufficient assets, resources and expertise to discharge the developer's obligations under the SVPA;
- a copy of the trust deed (if the incoming party is a trustee company); and,
- a replacement bank guarantee.

The department will prepare a deed of novation, which will be issued for signing by both the outgoing and incoming parties. If the department is satisfied that the requisite conditions have been met, including provision of a replacement bank guarantee and payment of the minister's costs (where relevant), the department can recommend that the minister/minister's delegate executes the deed of novation.

Removal of SVPA from the land title and return of bank guarantee/s

If the developer seeks to remove the SVPA from the title of the land, the developer must provide a completed 11R Release form. A developer can also seek the return of bank guarantee(s). The release from title and return of securities will only be permitted if the department is satisfied that the developer has fulfilled its obligations under the SVPA relating to that land and to which the security applies.



Figure 8. In stage 7, the department updates the Planning Agreements Register

Stage 7 – SVPA ends

If all obligations under an SVPA have been met, the department will consider the SVPA to have been concluded and we will update its status on the [State Planning Agreements Register](#) to reflect this.

Contact us

Contact us at planningagreements@planning.nsw.gov.au for more information.



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