

Policy 4.11 Voluntary Planning Agreements

Directorate	Community, Environment and Planning
Responsible Officer	Director Community, Environment and Planning

Table of Contents

1	Introduction	2
	Scope	2
1.1.1	Objectives	2
1.1.2	Land affected by this policy	2
1.1.3	Types of development affected by this policy	3
	Purpose	3
	Definitions	4
2	Legislation	4
3	Implementation	5
	Types of contributions	5
	Negotiation of a planning agreement	5
	Information required in a planning agreement	6
	Responsibilities	7
3.1.1	Elected Council	7
3.1.2	Chief Executive Officer (CEO), Leadership Executive Group (LEG)	7
3.1.3	Various staff as applicable	7
	Supporting documents	7
3.1.4	BVSC procedures that relate to this policy	7
3.1.5	BVSC policies that relate to this policy	7
	Appendix 1 - Types of Public Benefits	9
	Appendix 2 - Monetary contributions for the provision of car parking spaces	10

Record of Administrative Amendments

Amendment Version No.:	Description of Administrative Amendment	Date Reviewed
4.2	Review of policy in accordance with Section 165 of the Local Government Act 1993 Placed on Public Exhibition 23 July 2025	July 2025
4.1	Review of policy in accordance with Section 165 of the Local Government Act 1993 Workshopped by Councillors on 18 June 2025	June 2025
4	Adopted by Council (D24/83768)	24/7/2024

1 Introduction

Scope

The scope of this policy demonstrates direct commitment to the following strategic guiding principles:

- [Accountable | C](#)[ommitment to risk management and compliance and proactive consultation and engagement organisation wide](#)
- [Transparent | D](#)[ecision making processes are clearly outlined, including how a decision is made and who is involved](#)
- [Responsive | C](#)[ommitment to serve the needs of the entire community](#)
- [Equitable and inclusive | S](#)[trong consideration of the needs of all stakeholders](#)
- [Effective and Efficient | C](#)[lear connection between policy and implementation](#)

1.1.1 Objectives

Council has prepared this policy to:

- facilitate flexible and innovative delivery of public infrastructure, facilities, works services and social amenities in line with Council's community and planning strategies
- ensure developers, Councillors, Council staff and the public have a shared understanding of the role and intention of planning agreements
- establish best practice procedures for planning agreements that are clear, and that Council will consistently apply
- prescribe the process that will be followed in preparing, publicly exhibiting, signing, implementing and finalising planning agreements
- set out Council's expectations of individuals and any parties involved in the planning agreement process
- implement the NSW Government's practice note on planning agreements.

1.1.2 Land affected by this policy

This policy applies to all land in the Bega Valley Shire.

1.1.3 Types of development affected by this policy

This policy applies to planning agreements associated with:

- a planning proposal to change the planning controls applying to land, or
- a development application or modification of consent to carry out development.

Purpose

The timely delivery of local infrastructure to serve new or growing communities is an important role for Council. ~~The funding and delivery of local infrastructure – which includes local and collector roads, stormwater drainage networks, open space, recreation and community facilities – is a council responsibility.~~

~~The way the~~One way Council provides ~~these facilities~~local infrastructure is through contributions of money and/or land ~~required~~through the development approval process. These are known as s7.11 and s7.12 contributions. ~~where.~~

Another way local infrastructure can be delivered or funded is through the rezoning process. This is where developers prepare a planning proposal that seeks to amend the Bega Valley Local Environmental Plan (2013) to increase the development capacity of the land.

~~De~~Developers of land or rezoning applicants have the choice of either:

- making the contribution to Council, and Council then uses those contributions to deliver local infrastructure, or
- offering to directly provide public infrastructure on behalf of Council and the community.

Council recognises that greater efficiencies ~~often~~ can often be achieved through developers of land delivering public infrastructure as part of their developments, instead of Council. This can also reduce financial and construction risk to Council in the delivery of this infrastructure.

A formal agreement between Council, the developer and (where the developer does not own the land) the landowner/s is needed to make this happen.

These agreements ~~–~~ collectively termed ‘planning agreements’ in this policy ~~–~~ are voluntary for both Council and proponents. Ensuring there is an overall net public benefit to the community is key to Council’s decision to enter into a planning agreement.

This policy’s purpose is to outline how Bega Valley Shire Council will deal with developers of land in the Bega Valley Shire who offer to provide ~~development~~local infrastructure or contributions towards local infrastructure through such agreements.

This policy establishes a framework to assist Council to facilitate and manage the negotiation of planning agreements. Specifically, this policy supports Council to:

- achieve better planning outcomes or better community benefits from development and rezoning projects
- ensure the option to deliver local infrastructure is available to developers wherever this is reasonable, and reduce Council's active involvement in development-generated infrastructure delivery where practical

- provide a fair, consistent and accountable framework for Council to accept money, works, land or services from a developer that benefit the community in a transparent manner
- enable Council and developers to negotiate the type, extent, value, timing and means of providing public facilities and services as part of development.

Definitions

Word or Terminology	Description
Contributions Plan	A plan developed by a Council that authorises a consent authority to impose a condition of development consent requiring a contribution to be made under Section 7.11 or 7.12 of the EP&A Act toward local infrastructure.
Council	Bega Valley Shire Council
Developer	A person who has sought a change to an environmental planning instrument or made or proposes to make a development application or a complying development certificate, or requested to modify a development consent, or entered into an agreement with or is otherwise associated with a person to whom the above applies.
Development Application	An application for consent under Part 4 of the EP&A Act to carry out development but does not include an application for a complying development certificate.
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
Instrument change	A change to an environmental planning instrument to facilitate a development that is the subject of a planning agreement.
Planning Agreement (PA)	<p>A planning agreement is a voluntary agreement or other arrangement, usually in the form of a contract between a planning authority (including Council) and a developer. The contribution can be a monetary amount, dedication of land free of cost, any other material public benefit, or any combination of these.</p> <p>A planning agreement can be proposed by a developer or owner of land in connection with the following development types:</p> <ul style="list-style-type: none"> • a planning proposal to change the planning controls applying to land • a development application for consent to carry out development • the modification of a development consent.
Planning proposal	A document that explains the intended effect of proposed changes to an environmental planning instrument and sets out the justification for making the proposed instrument changes.
Practice Note	Planning Agreements Practice Note 2021 published by the NSW Department of Planning, Housing and Infrastructure.
Public or Community Benefit	A benefit enjoyed by the public as a consequence of a development contribution.

2 Legislation

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

3 Implementation

This section details how the Policy will be implemented.

Supporting procedures will usually give a step by step, or a general guide to support a Policy.

Types of contributions

A contribution can be in the form of, but not limited to:

- monetary contributions, land or works provided for infrastructure
- local infrastructure in addition to what has been identified under Council's contributions plan
- maintenance or operational costs of infrastructure provided by a developer over an agreed period of time
- dedication of land to Council for roads, public reserves or other public purposes identified in a development application to subdivide land
- works and facilities in the proposed development not anticipated in Council's contributions plan that meet the demands generated by that development.

Appendix 1 provides examples of the types of public benefits that may be considered under planning agreements.

Council has a template planning agreement for the monetary contributions for the provision of car parking spaces that are required by a development but are not provided on the development site (see Appendix 2 for the car parking rates per space and see Appendix 2 of Council's procedure 4.11.1 Steps in negotiation of a Voluntary Planning Agreement for the template planning agreement).

Council also has a template planning agreement for construction and maintenance of a former Crown Road reserve that is required to provide access to private property (see Appendix 3 of Council's external procedure 4.11.1 'Steps in negotiation of a Voluntary Planning Agreement').

Negotiation of a planning agreement

Council will facilitate and manage the negotiation of planning agreements by:

- a) ensuring all parties involved comply with Council's code of conduct and know their roles and responsibilities
- b) ensuring that the consideration, negotiation and assessment of planning agreements is separate from the assessment of a development application, modification application, complying development certificate or planning proposal
- c) ensuring that landowners and applicants participate in negotiations in a professional and courteous manner, not discuss negotiation matters with Councillors, Council staff (other than staff involved in the negotiation process), or seek to involve any Councillor in the negotiation process, and provide transparent and sound information to inform the agreement
- d) not permitting unacceptable development because of public benefits offered
- e) not seeking public benefits wholly unrelated to the development
- f) negotiating whether the agreement excludes or does not exclude the application of Section 7.11 contributions or Section 7.12 levies

- g) establishing timeframes to progress agreements efficiently and in a timely manner
- h) ensuring a record of any meeting with the planning agreement applicant(s) is documented, and meeting minutes are distributed to attendees within 10 working days following the meeting
- i) ensuring that where Council is a party in a development that is the subject of a planning agreement, there are appropriate steps taken to avoid a conflict of interest between the role as planning authority and Council's interest in the development
- j) following the '*approval flow chart*' (see Council's external procedure 4.11.1 'Steps in negotiation of a Voluntary Planning Agreement') to draft or modify a planning agreement including community involvement in the process
- k) ensuring the interests of developers, individuals or interest groups do not outweigh the public interest when considering a planning agreement
- l) ensuring Councillors refrain from discussion with the developer on any matter relating to a draft planning agreement before approval or before a meeting of Council that considers public submissions and whether to enter into the proposed agreement
- m) not imposing a condition requiring a planning agreement to be entered into between the parties before an offer to make a planning agreement has been made
- n) providing the developer with Council's standard specifications for the works or work with the developer to efficiently document the specification for the works
- o) keeping a register of planning agreements and modifications on Council's website and have [available](#) copies and other information about the planning agreements [available](#)
- p) performing quality assurance functions and maintaining detailed records on work completed by developers.

Information required in a planning agreement

A planning agreement will include the following information, as a minimum:

- a description of the land it applies to
- a description of the planning proposal or the development it applies to
- a description of what will be provided, and how and when it will be delivered
- whether the agreement excludes or does not exclude the application of Section 7.11 contributions or Section 7.12 levies
- what impact the agreement has on determining Section 7.11 contributions
- a dispute resolution process
- how the agreement will be enforced.

Council has a template planning agreement for the monetary contributions for the provision of car parking spaces that are required by a development but are not provided on the development site. Council also has a template planning agreement for construction and maintenance of a former Crown Road reserve that is required to provide access to private property (see Appendix 2 and 3 in Council's external procedure 4.11.1 '*Steps in negotiation of a Voluntary Planning Agreement*').

Council will engage a qualified legal firm to prepare draft planning agreements for all other circumstances where an agreement is proposed.

The developer is required to meet Council's legal costs in preparing a planning agreement, including any review and consideration of adjustments. Council's legal costs are to be addressed in the letter of offer.

Responsibilities

3.1.1 Elected Council

Endorse any draft planning agreement for public exhibition, unless Council officers have been delegated authority to do otherwise.

3.1.2 Chief Executive Officer (CEO), Leadership Executive Group (LEG)

Ensure appropriate delegations and procedures are in place to enable effective decision making in relation to planning agreements. Approve planning agreements where the Council has formally delegated authority to the CEO to do so.

3.1.3 Various staff as applicable

An officer formally given delegated authority by the elected Council will lead Council's negotiations. Other Council officers are involved in the negotiation process where required. The officer of Council involved in the direct negotiation of a planning agreement will not be an officer involved in the assessment of the instrument change or development application that is the subject of the planning agreement. Council officers also arrange public exhibition and report submissions [to Council of regarding](#) a planning agreement [to Council](#) where required.

Supporting documents

3.1.4 BVSC procedures that relate to this policy

Procedure No.:	Procedure Name	External or Internal Procedure
4.11.1	Steps in negotiation of a voluntary planning agreement	External
6.02.01	Code of Conduct (Bega Valley Shire Council)	External
6.02.01 (a)	Office of Local Government Procedures for the Administration of the Model Code of Conduct 2020	External
6.02.09	Elected Official Communication Protocols	Internal

3.1.5 BVSC policies that relate to this policy

Policy No.:	Policy Name
3.01	Development Administration
3.12	Council Related Development Application Conflict of Interest
6.02	Behaviour of Councillors and Staff

6.11	Records Management
------	--------------------

Note: Policy details may change from time to time. To ensure you are viewing the most recent version please view Council's adopted Policies and Procedures on Council's website.

Under Review

Appendix 1 - Types of Public Benefits

The table below outlines the types of public benefits that may be considered in a planning agreement. The list is indicative only and does not preclude other public benefits from being negotiated at any time.

Table 1.1: Types of public benefits that may be sought by Council

Type	Examples
Infrastructure	Roads Accessibility improvements Drainage and stormwater assets – drainage, integrated water treatment facilities, detention basins, over land flow paths and stormwater channel improvement, sediment control measures Pedestrian and cycleway connections Bridges (pedestrian and vehicle)
Public community facilities	Community buildings Public toilets Public carparking areas Bus shelters or interchanges Sport, recreation and activity assets Affordable housing
Public open space and public domain improvements	Embellishment of open space, new playgrounds, lighting, furniture, landscaping, shelters, BBQs Tree and undergrowth plantings in streets and open spaces Street furniture Public art in the public domain Environmental management Signage
Other contributions	Cash for maintenance of land, reserves, drainage Land dedication

Appendix 2 - Monetary contributions for the provision of car parking spaces

Monetary contributions for the provision of car parking spaces that are required by a development but are not provided on the development site will be as per Table 1.2 below. The rates in Table 1.2 are current for the 2023/2024 financial year and will be indexed to the date of payment in accordance with annual movements in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

Table 1.2: Car parking rates per space

Location	Rate per space
Bega	\$20,757
Bermagui	\$20,868
Cobargo	\$8,225
Eden	\$11,275
Merimbula	\$21,280
Pambula	\$15,996
Tathra	\$20,868

Note: Rates per space are based on the following:

- Bega, Cobargo and Eden - actual costs of completed projects (construction and land acquisition)
- Merimbula - construction of a decked parking structure at Alice Street or Palmer Street based on Rawlinsons Construction Cost Guide 2023
- Tathra, Bermagui - land acquisition at \$8,946 as per value of vacant commercial land from the Valuer General and ground level parking at \$11,922 based on construction costs of car parking at Auckland Street Bega
- Pambula - land acquisition at \$4,074 as per value of vacant commercial land from the Valuer General and ground level parking at \$11,922 based on construction costs of car parking at Auckland Street Bega