

Policy 4.11 Planning Agreements

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

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1.1 Introduction

1.1.1 Scope

This policy prescribes the processes implemented to facilitate and manage the negotiation of planning agreements where Council is or will be one of the parties.

1.1.2 Purpose

- To provide a fair, consistent and accountable framework to guide the negotiation of planning agreements where Council is or will be one of the parties.
- To ensure Council acts with probity, transparency and in the interests of the wider community in planning agreement negotiations.
- To enable flexible arrangements for the provision of local infrastructure in connection with new developments in the Bega Valley Shire.
- To enable a payment in lieu of the provision of on-site parking for commercial development in accordance with Council's current Development Control Plan.

1.2 Definitions.

Word or Terminology	Description
Council	Bega Valley Shire Council
Development Application	Has the same meaning as in the <i>Environmental Planning and Assessment Act 1979</i>
Instrument change	A change to an environmental planning instrument to facilitate a development the subject of a planning agreement
Planning agreement	<p>A voluntary arrangement between a developer of land and one or more councils and/or other planning authorities whereby the developer is required to:</p> <ul style="list-style-type: none"> • dedicate land free of cost, or • pay a monetary contribution, or • provide any other material public benefit, or • provide any combination of the above, <p>to be used for or applied towards the provision of a public purpose</p>

1.3 Legislation

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2001

1.4 Implementation

1.4.1 Policy statement

Bega Valley Shire Council will address the matter of facilitating and negotiating Planning Agreements in a systematic manner by:

- guiding the conduct of elected representatives and staff of Council to ensure that:
 - planning decisions are not bought or sold through planning agreements

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- planning agreements are voluntarily entered into. Under no circumstances will Council officers or representatives create an impression that a favourable planning or development decision is tied to successful negotiation of a planning agreement
 - the interests of individuals or interest groups are not allowed to outweigh the wider public interest when considering a proposed planning agreement
 - Council does not seek benefits under planning agreements that are unrelated to the development that is the subject of a planning agreement, nor will Council give undue weight to a proposed planning agreement when considering an instrument change or Development Application
 - Council does not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements
 - elected representatives of Council are never involved in negotiating a planning agreement
 - Involvement of elected representatives of Council is limited to consideration and determination of the instrument change or Development Application that is the subject of the planning agreement
 - Council's negotiations will be led by an officer formally given delegated authority by the elected Council. Other Council officers may also be involved in the negotiation process
 - an 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.
 - ensuring the parties to a planning agreement include Council, the developer and, if the developer is not the owner of the land that is the subject of the planning agreement, the landowner. The parties may also include another planning authority
 - ensuring that Council, at its complete discretion, may negotiate a planning agreement with a developer in connection with any application by the developer for an instrument change or for development consent relating to any land in Council's area
 - leaving the matter open as to whether a planning agreement excludes the application of Section 7.11 or Section 7.12 of the *Environmental Planning and Assessment Act 1979* to the development to which the planning agreement relates. This is a matter for negotiation between Council and a developer having regard to the particular circumstances of the case
 - ensuring the negotiation of draft planning agreements occurs concurrently with the preparation of a Development Application or instrument change. Council prefers that the planning agreement is negotiated before lodgement of the relevant application and that it accompanies the application on lodgement
 - ensuring that negotiations with a developer and their consultants are appropriately separated and documented
 - ensuring that where Council has a commercial stake in development that is the subject of a planning agreement, appropriate steps are taken to avoid a conflict of interest between Council's roles as a planning authority and a commercial party. Strategies that may be used to achieve this objective include engaging a third party to assess proposals and avoiding contractual arrangements which purport to guarantee outcomes that are subject to separate regulatory process

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- generally requiring that the developer and/or landowner parties meet Council's costs of and incidental to negotiating, preparing, entering into and enforcing the planning agreement. However, where it is demonstrated that the planning agreement will deliver substantial planning benefits to the wider community and not just the users of the development, this requirement may be removed or reduced
 - ensuring that Council facilitates public participation and allows the community to gain a proper understanding of the benefits of appropriate planning agreements for the provision of public benefits and planning benefits
 - ensuring that the planning agreement may be subject to further negotiation between the parties to consider any issue arising out of the public exhibition. This may result in the planning agreement being modified. Where the modification is considered by Council to result in a significant reduction in the public benefit to that which was included in the exhibited planning agreement, Council will publicly re-notify and make available for public inspection the modified planning agreement and the application to which it relates
 - considering the planning agreement and the application to which it relates at the same time. Council (or the relevant planning/consent authority) will then issue a determination of the application. Both the planning agreement and public submissions made in relation to that agreement will be matters for consideration in the determination of the instrument change or Development Application
 - imposing a condition on the development consent requiring the planning agreement to be entered into between the parties, where the application to which a planning agreement relates is a Development Application. Where the planning agreement relates to an instrument change, Council will resolve that the planning agreement be entered into before the relevant amendment is made to the local environmental plan is made
 - ensuring that where the application to which a planning agreement relates is a Development Application for a commercial development that is deficient in on-site car parking, per space rates will be as per Table 1.1. The rates in Table 1.1 are current for the 2022/23 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 1.1: Car parking rates per space**

Location	Rate per space
Bega	\$10,040
Bermagui	\$6,220
Cobargo	\$7,630
Eden	\$10,459
Merimbula	\$16,060
Pambula	\$6,220
Tathra	\$6,220

- ensuring modifications to approved development that is the subject of a planning agreement are subject to the same scrutiny as the original Development Application. Where such modifications materially affect the terms of the agreement Council will generally require a new or modified planning agreement to be prepared and exhibited concurrently with the application to modify the development consent. A modified planning agreement will be publicly exhibited and considered by Council (or other consent authority) in the same way as a new planning agreement
- keeping a register of all planning agreements applying to land within its area, including agreements that Council is a not a party to. The register will record the date an agreement was entered into and a short description of the agreement, including any subsequent amendments.

1.4.2 Responsibilities

1.4.2.1 Elected Council

Endorsement of the draft planning agreement for public exhibition. Consideration and determination of the instrument change or Development Application that is the subject of the planning agreement through the established framework provided under this policy and its relevant procedure.

1.4.2.2 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.

1.4.2.3 Various staff as applicable

CEP and AAO negotiate planning agreement. Council's negotiations will be led by an officer formally given delegated authority by the elected Council. Other Council officers may also be involved in the negotiation process. An 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.

Arrange public exhibition of planning agreement. Collate and report submissions to public exhibition of the planning agreement.

1.5 Supporting documents

1.5.1 BVSC procedures that relate to this policy

Procedure No.:	Procedure Name	External or Internal Procedure
4.11.01	Steps in negotiating a planning agreement	Internal

1.5.2 BVSC policies that relate to this policy

Policy No.:	Policy Name
3.01	Development Administration
4.05	Enforcement and compliance

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 the Council website: www.begavalley.nsw.gov.au