



ORANGE CITY COUNCIL

All policies can be reviewed or revoked by a resolution of Council, at any time.

VOLUNTARY PLANNING AGREEMENT

ST124

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OBJECTIVES

To provide the General Manager with a procedure for negotiating Voluntary Planning Agreements.

APPLICABILITY

This Policy sets out the City of Orange's policy and procedures relating to planning agreements under the *Environmental Planning and Assessment Act 1979*.

GENERAL

The purposes of this Policy are:

- (a) to establish a framework governing the use of planning agreements by the Council,
- (b) to ensure that the framework so established is efficient, fair, transparent and accountable,
- (c) to enhance planning flexibility in the Council's area through the use of planning agreements,
- (d) to enhance the range and extent of development contributions made by development towards public facilities in the Council's area,
- (e) to set out the Council's specific policies on the use of planning agreements,
- (f) to set out procedures relating to the use of planning agreements within the Council's area.

This Policy is not legally binding. However, it is intended that the Council and all persons dealing with the Council in relation to planning agreements will reasonably follow this Policy.

It is intended that this Policy will be periodically updated. The updates may cover additional matters to those covered in this Policy or provide more detailed information or guidance on specific matters covered in this Policy.

This policy has not dealt with the circumstances of a VPA which involves Council as a party and where the State Government is the consent authority. A further policy amendment will be developed for this circumstance.

RELATED POLICIES/DOCUMENTS

DoP Practice Note, OCC Template Planning Agreement
Voluntary Planning Agreement Procedure

Responsible Area – Development Services

REVISION					
	DATE	RESOLUTION		DATE	RESOLUTION
1	5 July 2012	12/299	6		
2	23 October 14	14/972	7		
3			8		
4			9		
5					

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VOLUNTARY PLANNING AGREEMENT PROCEDURE

ORANGE CITY COUNCIL

POLICY - PLANNING AGREEMENTS ORANGE CITY COUNCIL

Council's strategic objectives for the use of planning agreements

The Council's strategic objectives with respect to the use of planning agreements include:

- (a) to provide an enhanced and more flexible development contributions system for the Council,
- (b) more particularly, to supplement or replace, as appropriate, the application of s94 and s94A of the Act to development,
- (c) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits,
- (d) to allow the community, through the public participation process under the Act, to agree to the redistribution of the costs and benefits of development in order to realise community preferences for the provision of public benefits, and
- (e) to achieve net planning benefits from development wherever possible and appropriate

Fundamental principles governing the use of planning agreements

The Council's use of planning agreements will be governed by the following principles:

- (a) planning decisions may not be bought or sold through planning agreements,
- (b) development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms,
- (c) the Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any other Act or law,
- (d) the Council will not use planning agreements for any purpose other than a proper planning purpose,
- (e) the Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement,
- (f) the Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements,
- (g) where the Council has a commercial stake in development the subject of a planning agreement, it will take appropriate steps to ensure that it properly manages any conflict of interest between its role as a planning authority and its interest in the development.

PROCEDURE - PLANNING AGREEMENTS ORANGE CITY COUNCIL

Development application to which it relates

Where the application to which a planning agreement relates is required by or under the Act or Regulation to be publicly notified and available for public inspection for a period exceeding 28 days, the Council will publicly notify the planning agreement and make it available for public inspection for that longer period.

Where the application to which a planning agreement relates is permitted by or under the Act or Regulation to be publicly notified and available for public inspection for a period of less than 28 days, the Council will publicly notify the application and make it available for public inspection for a minimum period of 28 days.

The Council will publicly re-notify and make available for public inspection a proposed planning agreement and the application to which it relates if, in the Council's opinion, a material change is made to the terms of the agreement or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the agreement or the application, or their formal consideration by the Council, or for any other reason.

Specific purposes of planning agreements

The Council may consider negotiating a planning agreement with a developer to:

- (a) compensate for the loss of, or damage to, a public amenity, service, resource or asset caused by the development through its replacement, substitution, repair or regeneration,
- (b) meet the demands created by the development for new public infrastructure, amenities and services,
- (c) address a deficiency in the existing provision of public facilities in the Council's area,
- (d) achieve recurrent funding in respect of public facilities,
- (e) prescribe inclusions in the development that meet specific planning objectives of the Council,
- (f) monitor the planning impacts of development,
- (g) secure planning benefits for the wider community,
- (h) enable items listed in the works schedule of any contributions plan made by the Council under the Act to be brought forward.

Application of clause 4.6 of Orange Local Environmental Plan (OLEP) 2011 to development to which a planning agreement relates

The Council will not agree to a provision in a planning agreement requiring the benefit provided by the developer under the agreement to be used to justify a dispensation with applicable development standards under Clause 4.6 of OLEP 2011 in relation to development unless the Council is of the opinion that the subject matter of the proposed planning agreement addresses the matters required to be addressed under that Clause in relation to the dispensation sought.

Pooling of development contributions

Where a proposed planning agreement provides for a monetary contribution by the developer, the Council may seek to include a provision permitting money paid under the agreement to be pooled with money paid under other planning agreements and applied progressively for the different purposes under those agreements, subject to the specific requirements of the relevant agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

Provision of security under a planning agreement

The Council generally will require a planning agreement to make provision for security by the developer of the developer's obligations under the agreement.

The form of security will generally be the unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's provision under the agreement and on terms otherwise acceptable to the Council. Council may give consideration to the establishment of a VPA that defers the payment of developer contributions outside of an unconditional bank guarantee.

Notations on Certificates under s149(5) of the Act

The Council will generally require a planning agreement to contain an acknowledgement by the developer that the Council may, in its absolute discretion, make a notation under s149(5) of the Act about a planning agreement on any certificate issued under s149(2) of the Act relating to the land the subject of the agreement or any other land.

Registration of planning agreements

The Council will generally require a planning agreement to contain a provision requiring the developer to agree to registration of the agreement pursuant to s93H of the Act if the requirements of that section are satisfied.

Dispute resolution

The Council will generally require a planning agreement to provide for mediation of disputes between the parties to the agreement before the parties may exercise any other legal rights in relation to the dispute.

STEP-BY-STEP PROCEDURE

The process to be followed is:

- 1 Any proponent of a development, rezoning or other form of LEP amendment may submit a “Proposal to Negotiate” a VPA prior to lodging a development application or planning proposal (rezoning etc).**

Notation: The “Proposal to Negotiate” is non-binding on either party and it is highly recommended that professional advice be sought to assist in its preparation.

- 2 To be properly considered the Proposal to Negotiate must include:**

- a A map depicting the subject land that may be affected by the possible VPA.**

Notation: Council will not consider any VPA affecting an undefined, or poorly defined area. The map should be accompanied by a list of Lot and DP numbers of the land concerned as well as an area calculation

- b The proponents objective for the VPA**

Notation: This should comprise a broad statement outlining the development potential being sought, with an estimate of the likely scale of future development. The objective should address such matters as the number of dwellings or lots, additional commercial floor space, or the type of development or activity suggested for the site.

- c The current obstacle(s) to the objective**

Notation: This should comprise a broad statement outlining why the objective can not be pursued under the existing planning rules (zoning, lot size, building height, floor space ratio etc) and the kinds of issues likely to affect any future application (bushfire, ecologically sensitive land, traffic, parking, sewer and water etc)

- d The possible solution to the obstacle**

Notation: This should comprise a broad statement outlining any LEP changes and/or DCP variations that may be sought as well as how the likely issues could be addressed.

e The planning rationale and potential public benefit of the proposal

Notation: This should comprise a statement that outlines the potential benefit or the proposal in relation to:

- the natural environment,
- the social environment,
- the economic environment,
- The public interest
- Any other relevant planning objectives

This statement forms the main argument in favour, as perceived by the proponent, of the proposal and should be used to highlight the benefits to the community.

f A request that Council provide a “Statement of Issues” to enable the proponent to gauge the viability of proceeding with negotiating a VPA

3 Council will respond to the Proposal to Negotiate with either a “Statement of Issues” to be further considered before negotiations commence, or reject the proposal on the grounds that it does not appear to have sufficient merit to warrant further consideration.

Notation: While Council will endeavour to respond in a timely fashion, the wide range of issues surrounding potential VPAs makes it impossible to provide a fixed timeframe for a response. Additionally, a Statement of Issues is non-binding and does not constitute support for the proposal. Any Statement of Issues provided will merely list the range of matters that are likely to need to be addressed in any VPA, it will NOT nominate potential solutions, costs or monetary contributions.

While there is no legal ability to appeal a rejected proposal this does not constitute an absolute refusal. The proponent may, at their sole discretion and risk, undertake further research, studies or may redesign the concept that underpinned the “Proposal to Negotiate” and re-submit for fresh consideration.

However, where a re-submitted proposal is substantially unaltered from a previously rejected proposal the General Manager may opt not to assign staff resources to further consider the matter.

4 If a Statement of Issues is provided the proponent may request an “Inception Meeting” with Council staff to commence negotiations on the substance of the VPA.

Notation: At the inception meeting, Council will nominate a principal negotiator to represent Council. The principal negotiator will NOT be a planning officer, however a planning officer will be assigned to the principal negotiator to provide technical support on general planning matters and VPA processes.

The Inception Meeting will also include a range of relevant Council staff, depending on the nature of the proposal, who will act to support and advise Councils principal negotiator.

Despite the inclusion of supporting staff, all negotiations are to be conducted through the principal negotiator at all times.

Any planning officer involved in the negotiations will NOT offer an opinion on the merit or otherwise of the proposal. Any development application (DA) that may eventuate will NOT be assessed by the same planning officer that has been involved in negotiating the VPA nor any subordinate of that planning officer.

Council staff will continue to negotiate in good faith but are under no obligation to agree to enter into a VPA, regardless of the terms offered.

- 5 If the terms of a VPA are agreed by the principal negotiator and the proponent each party will seek independent legal advice on the formal drafting of the VPA document and the explanatory note.**
- 6 Once the VPA has been drafted to the satisfaction of both parties legal representatives, the proponent may proceed to formally submit a DA or Planning Proposal (whichever is relevant). Such applications must be accompanied by the VPA, and the VPA explanatory note.**
- 7 Council will undertake public exhibition of the VPA in conjunction with the relevant DA or Planning Proposal**

Notation: All VPA's are legally required to be publicly exhibited for a minimum period of 28 days and this may be extended in some circumstances. This will affect the timeframe for assessment of any related DA.
- 8 Post exhibition, the planning officer assigned to assess the DA or Planning Proposal may convene a meeting with Councils Principal Negotiator and the proponent to discuss any VPA related issues arising from the exhibition process.**
- 9 Should the post exhibition process result in a material change to the VPA, Council may require re-exhibition of the VPA in accordance with legislative requirements.**
- 10 If the VPA relates to a Development Application and is approved Council will impose a Condition of Consent requiring the VPA to be formally entered into prior to either a Construction Certificate, Subdivision Certificate or Occupation Certificate at Council's sole discretion.**
- 11 If the VPA relates to a Planning Proposal to amend the LEP, Council will require the VPA to be formally entered into prior to requesting the Minister gazette the amendment, or at such other stage as may be appropriate.**
- 12 Once formally entered into the VPA becomes binding on both parties, in accordance with the relevant terms of the VPA.**

Cautionary Note: There may be circumstances where the realisation that a VPA is required post dates the submission of a DA/Planning proposal. In this case, determination of the DA/Planning proposal should be held over until the VPA is finalised.

In this case withdrawal of the DA/Planning Proposal is appropriate until the VPA is agreed upon between both parties (i.e. Steps 1 to 6 are complete).