




Australia's property industry

**Creating for Generations**

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22 May 2020

Mr Peter Gainsford  
General Manager  
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Drummoyne NSW 1470

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Dear Mr Gainsford

## Draft Planning Agreement Policy & Procedures Manual

The Property Council welcomes the opportunity to provide comments to Council on its draft Planning Agreements Policy and Procedures Manual (the draft policy).

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. We are pleased to provide the following comments on the draft policy for your consideration.

Planning agreements can be a valuable tool in the planning system for the delivery of community infrastructure unable to be provided using traditional developer contribution plans. We support their use given the flexibility they offer to both the developer and the local council. There are some risks associated with planning agreements and that it why it is appropriate that their use be regulated by proper procedures and guidelines.

In November 2016 the NSW Government released a planning agreements reform package which included a draft Ministerial direction, draft practice note and draft planning circular. Improved guidance around planning agreements was needed as the current practice note was issued fifteen years ago in July 2005. We understand that this practice note was **not** adopted.

Sections 2.2.12 and 2.2.13 address matters contained within the 2016 Draft Practice Note. Council will be aware of a revised planning agreement practice note that was recently issued for consultation in April 2020 (2020 Draft Practice Note). The Department of Planning, Industry and Environment is currently accepting submissions. We recommend that Council ensure its planning agreement policy is consistent with the current draft practice note and is reflective of any requirements it contains.

In this regard, the fundamental principles within section 3.1 of the draft policy appears to be drawn from a much earlier practice note on planning agreements (issued in July 2005). The fundamental principles in the 2020 Draft Practice Note appear to be more current and should be adopted by Council.

The proposal that a minimum 50% of value uplift must be provided to Council under a planning agreement does not appear to be consistent with the 2020 Draft Practice Note. The 2020 Draft Practice Note states that "Value capture should not be the primary purpose of a planning agreement". In this regard, the 2020 Draft Practice Note makes the following point regarding value capture:

"Planning agreements should not be used explicitly for value capture in connection with the making of planning decisions. For example, they should not be used to capture land value uplift resulting from rezoning or variations to planning controls. Such agreements often express value capture as a monetary contribution per square metre of increased floor area or as a percentage of the increased value of the land. Usually the planning agreement would only commence operation as a result of the rezoning proposal or increased development potential being applied".

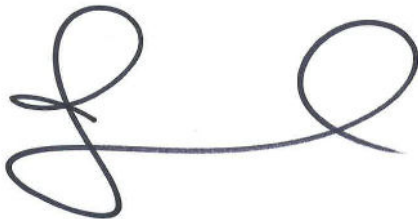
It would be preferable if Council was to seek contributions that are tied to identified infrastructure/affordable housing needs to support the additional density arising from development.

Should Council proceed with the draft policy as proposed, we support the use of an independent valuer to determine value uplift. We would ask Council to also consider an opportunity for the developer to obtain a valuation if they disagree with Council's valuation and the matter could be determined by a third independent valuer.

We note several of the amendments have been recommended following an audit of Council's planning agreement processes and procedures carried out in December 2018. These changes are supported.

Should you have any questions do not hesitate to contact Troy Loveday, Senior Policy Advisor, on 0414 265152 or [tloveday@propertycouncil.com.au](mailto:tloveday@propertycouncil.com.au)

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Jane Fitzgerald', with a stylized, flowing script.

**Jane Fitzgerald**  
**NSW Executive Director**  
**Property Council of Australia**