



Australia's property industry

Creating for Generations

Property Council of Australia
ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900

E. nsw@propertycouncil.com.au

propertycouncil.com.au

@propertycouncil

30 November 2020

Mr Hamish McNulty
The General Manager
Cumberland City Council
PO Box 42
MERRYLANDS NSW 2160

Email – Council@cumberland.nsw.gov.au

Dear Mr McNulty

Planning Agreements Policy & Guidelines

The Property Council welcomes the opportunity to provide comments to Cumberland City Council on the draft Planning Agreements Policy (the Policy) and draft Guidelines.

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 attached comments on the Policy and the Guidelines for your consideration.

Should you have any questions regarding the content of this submission, please contact Troy Loveday, NSW Policy Manager, on 0414 265 152 or tloveday@propertycouncil.com.au

Yours sincerely



Jane Fitzgerald
NSW Executive Director
Property Council of Australia

Submission to Cumberland City Council

Planning *A*greements Policy & Guidelines

30 November 2020

1.0 General Comments

The Property Council welcomes the opportunity to provide Council with comments on its draft Planning Agreements Policy (the Policy) and draft Planning Agreements Guidelines which is intended to replace the current policy adopted in September 2017.

It is appropriate for Council to undertake a review of these guidance material given an updated planning agreements framework (including a Draft Secretary's Practice Note and Draft Ministerial Direction) was released by the Department of Planning, Industry and Environment (DPIE) in April 2020. Council should ensure that its policy is consistent with the final approved version of the State Government framework.

2.0 Planning Agreements Policy

2.1 Purpose, scope and objectives

The purpose, scope and objectives of the draft Policy have been reviewed. The Property Council views these as appropriate and therefore they are supported.

2.2 Principles

The thirteen (13) principles that will govern Council's the use of the Policy are generally supported, except the following:

- *The community is entitled to a share of the unearned increment of land value uplift as a consequence of the actions of Council as a planning authority.*

This particular principle is contrary to the State Government's position which is set out in the draft Secretary's Practice Note which states;

"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".

We recommend that Council remove this principle from the draft Policy.

The remaining twelve (12) principles are appropriate.

2.3 Requirements

Value Capture: At page 6 the Policy, under the heading 'Strategic Approach to Planning Agreements', there is a specific reference to value capture that states the following:

"Where Council considers that value capture contributions are appropriate in respect of a particular offer to enter into a planning agreement, a rate of 50% of the uplift in land value will be considered by Council as a starting point for negotiations"

This section should also be removed from the Policy as it is also contrary to the State Government's position regarding planning agreements.

Enforcement costs: At page 7 of the Policy, under the heading 'Administrative Framework', there is a statement regarding costs of implementing a planning agreement that states:

"Council will require a planning agreement to make provision for payment by the developer of Council's costs of and incidental to, negotiating, preparing, advertising and entering into the agreement ...as well as administering and enforcing the agreement. Council may require the planning agreement to make provision for a contribution by the developer towards the ongoing administration of the agreement".

The Property Council has noted Council's position and accepts that all reasonable costs associated with a planning agreement should be borne by the developer. Responsibility for any additional costs that may be incurred should be subject to negotiation between the parties.

Related Legislation: At page 7 of the Policy, Council has indicated that the Policy may be amended, if required, for consistency with any revised Practice Note. The Property Council strongly urges Council to update its Policy (if required) to address any inconsistency with the final version of the Secretary's Practice Note.

We support the remaining parts of the Requirements section which are reasonable and appropriate.

3.0 Draft Cumberland Planning Agreements Guidelines

The Property Council appreciates the opportunity to review and provide comments to Council on the draft Cumberland Planning Agreements Guidelines (the draft Guidelines).

We are providing the following comments to Council to ensure they are consistent with State Government policy. We recommend Council take these changes into consideration prior to being finalised:

- We suggest Council remove **Section 2.7 Value Capture Contributions** of the draft Guidelines to conform with the Draft Secretary's Practice Note,
- Council should clarify whether the requirements set out in **Section 2.10 Affordable Housing** of the Guidelines conform with the intent of *Environmental Planning and Assessment (Planning Agreements) Direction 2019*.
- We have noted and support the proposed monitoring and review process outlined in Section 5.5 of the Guidelines.