



7. PLANNING

Policy 7.6

Development Applications ~~by Councillors and Staff or on~~ Council
Owned Land

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Version 4

7. PLANNING

7.6 DEVELOPMENT APPLICATIONS BY COUNCILLORS AND STAFF OR ON COUNCIL OWNED LAND

OBJECTIVE:

To provide a transparent protocol for the determination of development applications lodged by councillors, staff and relatives thereof or development applications for development on Council owned land.

DEFINITIONS:

Executive Staff includes the General Manager and any Manager that reports directly to the General Manager.

Relative includes a spouse, child, brother, sister, grandparent, grandchild, aunt, uncle, niece or nephew or child, brother, sister, grandparent, grandchild, aunt, uncle, niece, or nephew of the staff members spouse.

POLICY:

1. That, subject to the exemptions in Part 2 of this Policy, any development application lodged where the applicant is a Councillor or a member of staff, or where a Councillor or member of staff is the owner of the land to which the application relates, or where the development application is for development on Council owned land, that such an application be referred to Council for consideration and determination.

2. The following are exempted from the requirements of this policy:

Applications for Non-Executive Staff

- (i) dwellings and dwelling additions
- (ii) ancillary building structures
- (iii) subdivisions creating no more than 5 additional allotments
- (iv) Modification applications

Applications involving Council Owned Land

- (i) Modification applications, unless the modification directly relates to a matter that was subject to an objection or objections when the application was originally determined by the elected Council
- (ii) Applications where the Council owned land does not specifically form part of the development proposal but ancillary aspects of the proposal (eg stormwater, water, sewerage) will occur on Council land

3. In a case where an application is lodged by a non-executive staff member or a relative of a staff member and the Council officer would normally hold delegated authority to determine the application, then the application

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 <#> This policy does not apply to applications for the modification of development consent unless the modification represents a significant departure from the original application. However, staff cannot assess or determine modification applications involving their development; their land; or development or land involving a family member.¶

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Maintained by Department:	Development	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	7.6	Effective Date:	11/5/09
Min No:	V1 - 06-349 V2 - 07-501 V3 - 09-189 V4 - TBA	Version No:	4	Review Date:	<u>August 2014</u>
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Lithgow City Council Policy [Policy 7_6](#)
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7. PLANNING

Policy 7.7

Calling in of Development Applications by Councillors

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Version 3

7. PLANNING

7.7 CALLING IN OF DEVELOPMENT APPLICATIONS ~~S~~/BY COUNCILLORS

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OBJECTIVE

To provide a consistent approach that allows Councillors to “call in” certain development applications that may otherwise be determined under delegated authority.

POLICY

1. Councillors will be provided with a list of all development applications received by Council within the reporting period on their IPAD's in association with Business Papers s for Ordinary Meetings of Council.
2. A development application may be called in under the following circumstances:
 - (i) Should Council resolve to “call in” a development application by a method which complies with Clause 241 of the Local Government (General) Regulation 2005 and Council's Code of Meeting Practice* the application shall not be determined under delegated authority but referred to an Ordinary Meeting of Council for determination.
 - (ii) Should written notice, signed by a minimum of 3 Councillors and including reasons why the application is being called in, be provided to the General Manager prior to determination of a development application, the application shall not be determined under delegated authority but shall be:
 - Reported to the next available Ordinary Meeting for the information of Council that the development application or development application/construction certificate has been ‘called in’; and
 - Reported to a Meeting of Council for determination where the application is in a state that it can be determined.
4. This policy does not apply to applications to modify development consents unless the modification represents a significant departure from the original application; would involve issues the subject of an objection with the original application; or where the modification application itself has been called in under the processes outlined in this policy.

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*For example, following the consideration of a notice of motion or as a motion which has been carried to have the business transacted at the meeting and the chairperson has ruled that the item is business of great urgency.

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7. PLANNING

Policy 7.8

SEX SERVICES PREMISES AND HOME
OCCUPATION (SEX SERVICES) PREMISES
REQUIREMENTS

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7.8 SEX SERVICES PREMISES REQUIREMENTS

OBJECTIVES:

To provide location requirements, development guidelines and advice to applicants on the information required to be submitted with a development application for a sex services premises and home occupation (sex services) premises.

DEFINITIONS

home occupation (sex services) means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than 2 permanent residents of the dwelling and that does not involve:

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or
- (c) the exhibition of any notice, advertisement or sign, or
- (d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, but does not include a home business or sex services premises.

restricted premises means business premises or retail premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include hotel or motel accommodation, a pub, home occupation (sex services) or sex services premises.

sex services means sexual acts or sexual services in exchange for payment.

sex services premises means a brothel, but does not include home occupation (sex services).

POLICY:

Development Application - Information to be Supplied

A development application for a sex services premises must be accompanied by all information as required by Schedule 1 of the Environmental Planning and Assessment Regulation 2000¹ and also must include:

- A description of the activities that are proposed to be undertaken at the premises.
- A site and location plan to scale showing the proximity of the subject site to adjoining properties and sensitive land uses such as dwellings, dwelling houses, child care centres, educational establishments, places of public entertainment, places of assembly, recreation establishments, recreation facilities, places of worship, hospitals and any other place where children or young people are likely to regularly congregate including railway stations and major bus stops.
- A floor plan to scale showing all room uses (including the identification of rooms

¹ Or should this regulation be repealed, any new or amending regulation

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proposed to be used for the conduct of prostitution), layouts, location of windows and doors including all entrances/exits from the building and the nomination of the primary access.

- An elevation plan.
- Food premises construction and fit-out plans.
- Proof of permissibility within the zone under the current Lithgow City Local Environmental Plan.
- Assessment of the proposed use against any applicable State Environmental Planning Policy, Regional Environmental Plan, Development Control Plan, this Policy and any other applicable Federal or State legislation.
- Location, number and layout of car parking.
- A Social Impact Statement prepared by a qualified social practitioner.
- Details of compliance with the Disability Discrimination Act 1992.
- Details of proposed signage indicating the size, number, colour, illumination, content and position.
- Details of existing and proposed external lighting.
- A plan of management detailing the operation and management of the sex services premises in terms of:
 - o Management and staff arrangements – details of the operator and owner including contact phone numbers; the number of sex workers and support staff; number of security guards and any other staff and their role.
 - o Access for clients – how access and egress will be provided for people including those with disabilities. It should also include how access is to be restricted to ensure that no person under 18 years of age gains access to the premises.
 - o Hours of operation – list proposed hours.
 - o Safe sex assurance – outline how safe sex information and equipment eg. condoms etc are to be made available to all occupants of the premises.
 - o Arrangement of appointments – outline a procedure for the admission of clients by appointment only noting that a telephone booking is preferred.
 - o Control of antisocial or violent behaviour – strategies which are to be implemented to deal with inappropriate behaviour in the premises. Relevant qualifications of security staff should be included to ensure that they can appropriately deal with such behaviour.
 - o Sale and supply of drugs – detail strategies to ensure that the sale and supply of drugs does not occur on the premises.
 - o Safety and security – measures to be taken to ensure the safety of both staff and clients within and outside of the premises. It should address matters such as the management and monitoring of people on the premises; maintaining a current list of emergency numbers; maintenance of an incident book on the premises which can be accessed by the police; alarm and surveillance systems; security patrols by licensed security firms.
 - o Waste and recycling management – demonstrate that adequate facilities have been provided for the storage and management of waste in accordance with NSW Health and WorkCover NSW Guidelines for Brothels and this Policy.
 - o Presentation of the premises – strategies demonstrating general upgrading and ongoing maintenance of the condition of the premises.
 - o Cleanliness of the premises – demonstrate how the premises is to be kept clean and tidy in accordance with NSW Health and WorkCover NSW Guidelines for Brothels.
 - o Access for Council officers and other regulatory staff – detail how access to

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the premises will be provided.

NOTE: Council encourages a pre-development application meeting to ensure that applicants are familiar with the relevant requirements.

Notification of Development Application

Development applications will be advertised and notified in accordance with the following:

- A letter being sent to the owners and occupiers of adjoining land and any other individual, group, organisation or similar deemed by Council to have, or likely to have an interest in the proposed development. The letter shall contain:
 - o the address of the proposed site
 - o a description of the proposed work/use
 - o an A4 notification plan (where practical) of any proposed building work which depicts its height, external configuration and siting
 - o name and contact number of the relevant Environmental Planner
 - o advice that the application may be inspected at Council's offices during normal office hours
 - o the closing date for written submissions
 - o advice that the authors details may be disclosed at some point in the determination process.
- An advertisement in a local newspaper.
- Notification period is for 14 days from the date of the advertisement in the local newspaper. Council maintains discretion to lengthen the notification period if considered necessary.

Written submissions or objections will be taken into consideration in Council's determination of the development application.

Referral

Development applications will be referred to the NSW Police, NSW Health, NSW Department of Education and other relevant government agencies for comment where considered appropriate.

Limits on Consent

If Council grants development consent, it shall impose a condition limiting the life of the consent to a period of 2 years from the date of issue of the Occupation Certificate.

Should the proponent wish to continue operations then this will be the subject of a new development application or modification application should the premises have operated without complaint during the period since development consent was granted.

Location

Home occupation (sex services) premises and sex services premises are permissible with consent only in the Industrial 4 Zone of the current Lithgow City Local Environmental Plan. In addition, a sex services premises shall not be located:

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- within 80 metres of a restricted premises, another sex services premises, school, church, child care centre or recreational facility. This distance is to be measured on a direct route via the nearest public road.
- on a property that adjoins an arterial road.

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Scale and Character

- Sex services premises are to be restricted in total floor space such as that it is to provide not more than 5 rooms in which acts of prostitution are to take place.
- No portion of any sex services premises not approved for use as a sex services premises is to be used for the conduct of acts of prostitution. Prostitution within an approved sex services premises is to be confined to rooms or areas so nominated on the submitted plans which are the subject of Council's consent.
- The sex services premises is to be provided with an adequate reception area/waiting room being a minimum area of 20m².
- The sex services or home occupation (sex services) premises is to be located on an allotment with a minimum size of 900m².
- A sex services premises is not to be located in a building that contains a dwelling.
- Any new building or refurbishment of an existing building is to be designed so as to be compatible with the built form of adjoining premises and integrated into the streetscape. The finishes on the building are not to draw undue attention to the premises.
- There is to be only 1 visible entrance/exit at street level and it is to be discreet, safe and unobtrusive.
- The premises must be numbered, with the number clearly visible from the street in a manner that does not draw undue attention to the premises.
- The interior of the premises must not be visible from any public place.
- Where the interior of the premises may be visible from neighbouring buildings, adequate measures should be taken to screen the interior of the building (ie. blinds, screens etc). Such screening is to match the outside colour of the building.
- Access for people with disability must be provided in accordance with all relevant legislation.
- The premises must provide the following minimum staff facilities:
 - o Sanitary facilities (toilet, hand basin and shower)
 - o Rest area with seating

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- o Dining area with food preparation and storage areas
- o Sink with running water, water boiling facilities and fridge
- o Lockers to store personal items
- o Notice board containing details required to be displayed to fulfil requirements of the Plan of Management.

Amenity

- The use of the premises shall not give rise to:
 - o Offensive noise as defined in the Protection of the Environment Operations Act 1997.
 - o A sound level at any point on the boundary of the premises greater than the background level which is to be provided to Council prior to issue of Occupation Certificate.
- There is to be no distinctive external lighting (ie. coloured globes).
- Spruikers (staff at the door or outside the premises who encourage patrons to enter) are not permitted.
- The premises shall not display sex workers or sex related products from windows, the entrance/exit or outside the premises.

NOTE: Council will exercise its discretion in relation to hours of operation, taking into consideration the nature of the surrounding land use, the approved hours of operation of surrounding land uses and any possible conflicts with these uses.

Parking

Parking shall be provided at the rate of 1 space per staff working at any one time in the premises, plus 1 space per room where of acts of prostitution are conducted.

Signage (Sex Services Premises)

Signage shall be in accordance with the State Environmental Planning Policy No. 64 and Lithgow City Council – Outdoor Advertising Development Control Plan. In addition, any signage must also comply with the following:

- Only 1 flush wall or window sign as defined in the Greater Lithgow City Council – Outdoor Advertising Development Control Plan is permitted per premises.
- The sign must not exceed 0.3 metres by 0.6 metres in size and may only identify the registered name of the business.
- The sign shall not display words or images which are in the opinion of the Council sexually explicit, lewd or otherwise offensive.
- Signs must not be illuminated.
- The sign must be compatible with the design of the building to which it is attached and the streetscape.

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- No advertising is to be provided on bus shelters, seating or the like within the Local Government Area.

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Security

- The design of carparks, landscaping and entrance/exit should facilitate casual or formal surveillance.
- The entrance/exit to the premises must be designed to facilitate the privacy of workers and clients without compromising personal safety.
- Adequate lighting of the carpark and entrance/exit is essential but not to the extent where it becomes a prominent feature in the streetscape.
- Any landscaping that is proposed should not obstruct the visibility and overlooking from public areas of the entrance/exit so as to ensure the safety of all workers and clients to premises.
- The operator of the premises is to provide a security patrol in the vicinity of the premises to ensure the proper conduct of patrons and the safety of staff leaving the premises.
- The premises must include adequate safety and surveillance systems.
- Secure entry and controlled internal and external access, preferably with remote door release mechanisms should be provided.
- The premises must have a duress alarm and intercom in each room that is used for acts of prostitution. These alarms are to be connected back to a central base (such as reception) that is to be monitored at all times.
- Rooms used for acts of prostitution must not include the provision of door locks.

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NOTE: Operators must comply with the requirements of the Workplace Surveillance Act 2005 and Summary Offences Act 1988.

Building Standards

The premises is to comply with the provisions of the Building Code of Australia.

Health Standards

- The premises must comply with the NSW Health and WorkCover NSW Guidelines for Brothels and all premises must have a copy available for viewing in all staff and client waiting areas.

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- Each room used or available for the conduct of acts of prostitution is to contain or have direct access to its own shower, toilet and wash hand basin facilities for the use of clients. ← Formatted: Justified
- Separate toilet and shower facilities must be provided for staff.
- All hand wash basins must be provided with an adequate supply of potable water at a temperature of 40.5 to 43.5°C and delivered through an appropriate mixing device that may be adjusted to enable hand washing under warm running water. Liquid antibacterial soap and single use paper towel or air dryers are also to be provided. ← Formatted: Justified
- Warm water systems must comply with the requirements of the Public Health Act 1991 and Public Health (Microbial Control) Regulation 2000.
- Any food preparation areas are to be constructed in accordance with AS 4674 Design, construction and fit-out of food premises.
- Swimming and Spa pools must comply with the NSW Health's Public Swimming Pool and Spa Pool Guidelines and the Protocol for Minimising Risk of Cryptosporidium Contamination in Public Swimming Pools and Spa Pools. ← Formatted: Justified
- Spa baths must be drained, filled and dosed with a non toxic solvent and surfactant, circulated, drained and then rinsed, on a weekly basis. Spa baths must be drained after each use so they can be cleaned and refilled with fresh water. ← Formatted: Justified
- Contaminated waste i.e. waste containing bodily fluids are to be double bagged in plastic and placed into a waste receptacle provided on the premises. Contaminated wastes are to be disposed of by a licensed waste contractor. ← Formatted: Justified
- Information on safe sex, sexually transmitted diseases and good sexual health practices must be freely available in English and a variety of community languages. This information is to be displayed in a waiting/reception area and be clearly visible to anyone entering the premises. All information must be medically accurate. ← Formatted: Justified

Other General Requirements

- Should the specified operator change, Council must be notified prior to the business operating. Deleted: ¶
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- No alcohol is to be provided or offered for sale.
- Council will request regular reports from the local Police that the premises are being operated in a satisfactory manner.

Health Service Access and Inspections

The operators of sex services premises must provide reasonable access to the premises for authorised staff from health service providers and other agencies to provide information and educational activities to support the health and safety of staff and clients to the premises. ← Formatted: Justified

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- To prohibit home occupation (sex services) within the Lithgow Local Government Area.

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Home occupation (sex services) means the provision of sex services in a dwelling, or in a building ancillary to a dwelling, by no more than 2 permanent residents of the dwelling and that does not involve:

- the employment of persons other than those residents, or
- interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or
- the exhibition of any notice, advertisement or sign, or
- the sale of items (whether goods or materials), or the exposure of offer for sale of items, by retail,

but does not include a home business or sex services premises.

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Restricted premises means a business premises or retail premises that, due to its nature, restricts access to patrons or customers over 18 years of age and includes sex shops and similar premises, but does not include hotel

accommodation, a pub, home occupation (sex services) or sex services premises

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Sex services means sexual acts or sexual services in exchange for payment.

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Sex services premises means premises used primarily for the provision of sex services, but does not include home occupation (sex services).

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Home occupation (sex services) is prohibited in all zones of the current
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7. PLANNING

Policy 7.10

REQUIREMENTS FOR RESTRICTED PREMISES

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7. PLANNING

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7.10 REQUIREMENTS FOR RESTRICTED PREMISES

OBJECTIVES:

To provide development guidelines and advice to applicants on the information required to be submitted with a development application for restricted premises.

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DEFINITIONS:

home occupation (sex services) means the provision of sex services in a dwelling that is a brothel, or in a building that is a brothel and is ancillary to such a dwelling, by no more than 2 permanent residents of the dwelling and that does not involve:

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(a) the employment of persons other than those residents, or
(b) interference with the amenity of the neighbourhood by reason of the emission of noise, traffic generation or otherwise, or
(c) the exhibition of any notice, advertisement or sign, or
(d) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, but does not include a home business or sex services premises.

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restricted premises means business premises or retail premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex shops and similar premises, but does not include hotel or motel accommodation, a pub, home occupation (sex services) or sex services premises.

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sex services means sexual acts or sexual services in exchange for payment

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sex services premises means a brothel, but does not include home occupation (sex services).

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POLICY:

Development Application – Information to be Supplied

A development application for a restricted premises must be accompanied by all information as required by Schedule 1¹ of the Environmental Planning and Assessment Regulation 2000 and also must include:

- A description of the activities that are proposed to be undertaken at the premises.
- A site and location plan to scale showing the proximity of the subject site to sensitive land uses such as dwellings, dwelling houses, child care centres, educational establishments, places of public entertainment, places of assembly, recreation establishments, recreation facilities, places of worship, hospitals and any other place where children or young people are likely to regularly congregate including railway stations and major bus stops.

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Sex services means sexual acts or sexual services in exchange for payment.¶
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Sex services premises means a brothel, but does not include home occupation (sex services).¶

¹ Or should this Regulation be repealed, any amended Regulation

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- A floor plan to scale showing all room uses, layouts, location of windows and doors including all entrances/exits from the building and the nomination of the primary access.
- An elevation plan.
- Proof of permissibility within the zone under the current Lithgow City Local Environmental Plan.
- Assessment of the proposed use against any applicable State Environmental Planning Policy, Regional Environmental Plan, Development Control Plan, this Policy and any other applicable Federal and State legislation.
- Location, number and layout of car parking.
- A description of the anticipated impact on the surrounding area due to the proposed restricted premises. In some instances a Social Impact Statement prepared by a qualified social practitioner may be required.
- Details of compliance with the Disability Discrimination Act 1992.
- ~~Details of proposed signage indicating the size, number, colour, illumination, content and position.~~
- A plan of management detailing the operation and management of the restricted premises in terms of:
 - Management and staff arrangements – details of the operator and owner including contact phone numbers; the number of staff and number of security guards (if proposed).
 - Access for clients – how access and egress will be provided for people including those with disabilities.
 - Hours of operation – list proposed hours.
 - Methods to restricting access to ensure that no person under 18 years of age gains access to the premises.
 - Control of antisocial or violent behaviour – strategies which are to be implemented to deal with inappropriate behaviour in the premises. Relevant qualifications of security staff should be included to ensure that they can appropriately deal with such behaviour, if proposed.
 - Safety and security – measures to be taken to ensure the safety of both staff and clients within and outside of the premises.
 - Waste and recycling management – demonstrate that adequate facilities are provided for waste and recycling.
 - Presentation of the premises – strategies demonstrating general upgrading and ongoing maintenance of the condition of the premises.
 - Access for Council officers and other regulatory staff – detail how access to the premises will be provided.

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Notification of Development Application

Development applications will be advertised and notified in accordance with the following:

- A letter being sent to the owners and occupiers of adjoining land and any other individual, group, organisation or similar deemed by the Council to have, or likely to have an interest in the proposed development. The letter shall contain:
 - the address of the proposed site
 - a description of the proposed work/use
 - an A4 notification plan (where practical) of any proposed building work which depicts its height, external configuration and siting
 - name and contact number of the relevant Environmental Planner

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- advice that the application may be inspected at Council's offices during normal office hours
- the closing date for written submissions
- advice that the authors details may be disclosed at some point in the determination process.
- An advertisement in a local newspaper.
- Notification period is for 14 days from the date of the advertisement in the local newspaper. Council maintains the discretion to lengthen the notification period if considered necessary.

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Written submissions or objections will be taken into consideration in Council's determination of the development application.

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Referral

Development applications will be referred to the NSW Police, NSW Department of Education, NSW Health and other relevant government agencies for comment where considered appropriate.

Scale and Character

- The premises is to be restricted in net floor area to no greater than 150m².
- Any new building or refurbishment of an existing building is to be designed so as to be compatible with the built form of adjoining premises and integrated into the streetscape. The finishes on the building are not to draw undue attention to the premises.
- There is to be only 1 visible entrance/exit at street level and it is to be discreet, safe and unobtrusive.
- The premises shall not display sex related products from windows, the entrance/exit or outside the premises.
- The premises must be numbered, with the number clearly visible from the street in a manner that does not draw undue attention to the premises.
- The interior of the premises must not be visible from any public place.
- Where the interior of the premises may be visible from neighbouring buildings, adequate measures must be taken to screen the interior of the building (ie. blinds, screens etc).
- Access for people with disability must be provided in accordance with all relevant legislation.
- Private viewing rooms or cubicles are not permitted within the premises.

Location

- Restricted premises shall not be located within 80 metres of another restricted premises, sex services premises, school, church, child care centre or recreational facility. This distance is to be measured on a direct route via the nearest public road.

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Amenity

- Hours of operation must be restricted to between 9am and 7pm, 7 days per week, except public holidays when the premises is to be closed.
- There is to be no distinctive external lighting (ie. coloured globes).
- Spruikers (staff at the door or outside the premises who encourage patrons to enter) are not permitted.

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Parking

Parking shall be designed and provided in accordance with the Greater Lithgow City Council - Off Street Car Parking Development Control Plan.

Signage

Signage shall be in accordance with the State Environmental Planning Policy No. 64 and Greater Lithgow City Council – Outdoor Advertising Development Control Plan². In addition, any signage must also comply with the following:

- Only 1 flush wall or window sign as defined in the Greater Lithgow City Council – Outdoor Advertising Development Control Plan is permitted per premises.
- The sign must not exceed 0.3 metres by 0.6 metres in size and may only identify the registered name of the business.
- The sign shall not display words or images which are in the opinion of the Council sexually explicit, lewd or otherwise offensive.
- ~~Signs must not be illuminated.~~
- The sign must be compatible with the design of the building to which it is attached and the streetscape.
- No advertising is to be provided on bus shelters, seating or the like within the Local Government Area.
- At the entrance to the premises there must be prominently displayed, so as to be able to be read from outside the premises, a notice, printed in clearly legible letters at least 15mm in height, containing the following words: RESTRICTED PUBLICATIONS AREA – PERSONS UNDER 18 MAY NOT ENTER. MEMBERS OF THE PUBLIC ARE WARNED THAT SOME MATERIAL DISPLAYED IN THIS AREA MAY CAUSE OFFENCE.

Security

- The design of carparks, landscaping and entrance/exit should facilitate casual or formal surveillance.
- The entrance/exit to the premises must be designed to facilitate the privacy of workers and clients without compromising personal safety.
- Adequate lighting of the entrance/exit is essential but not to the extent where it becomes a prominent feature in the streetscape.

Building Standards

The premises is to comply with the provisions of the Building Code of Australia.

Maintained by Department:	Development	Approved by:	Council		
Reference:	Dataworks: Policy Register	Council Policy No:	7.10	Effective Date:	11/5/09
Min No:	V1 - 06-414 V2 – 09-189 V3 - TBA	Version No:	<u>3</u>	Review Date:	<u>October2013</u>
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² Or should this SEPP or DCP be repealed, any amending or replacement SEPP or DCP



7. PLANNING

Policy 7.12

VOLUNTARY PLANNING AGREEMENTS

Version 2

7. PLANNING

7.10 VOLUNTARY PLANNING AGREEMENTS

OBJECTIVES:

This policy provides procedures concerning the use of Voluntary Planning Agreements (VPAs) in the Lithgow Local Government Area.

DEFINITIONS:

Developer - is a person who has sought a change to an environmental planning instrument or who has made or proposes to make a development application or who has entered into an agreement with or is otherwise associated with such a person.

Development contribution - means the kind of provision made by a developer under a planning agreement being a monetary contribution, the dedication of land free of cost, or the provision of a material public benefit.

Planning benefit - means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of a particular development on surrounding land or the wider community.

Public facilities - means public infrastructure, facilities, amenities and services.

Planning obligation - means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution.

Public benefit - is the benefit enjoyed by the public as a consequence of a development contribution.

POLICY:

CIRCUMSTANCES IN WHICH COUNCIL WOULD ORDINARILY CONSIDER ENTERING INTO A PLANNING AGREEMENT¹

- Council will consider entering into a planning agreement in connection with a proposed change to an environmental planning instrument or a proposed/submitted development application. Some examples of circumstances where VPAs may be appropriate include:
- Compensation for loss or damage caused by development - VPAs can provide for development contributions that compensate for the loss of or damage to a public amenity, service, resource or asset that will or is likely to result from the carrying out of the

¹ Council may implement Standard Working procedures from time to time to guide staff in the process of negotiating VPA's including potential level of contributions and/or rationale for calculation of contribution, compensation or other public benefit.

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development the subject of the agreement.

- Compensation for use of public land - VPAs can provide for development contributions that compensate for the use public land for the installation of infrastructure where this cannot be accommodated on the development site
- Meeting demand created by development - VPAs can provide for development contributions that meet the demand for new public infrastructure, amenities and services created by development the subject of the agreement.
- Prescribing inclusions in development - VPAs can be used to secure the implementation of particular planning policies by requiring development to incorporate particular elements that confer a public benefit such as open space, recreational facilities, retention of urban bushland etc.
- Providing planning benefits to the wider community - Through a VPA, development may provide an overall net benefit to the wider community rather than purely addressing the direct impacts of the development. Planning benefits may take the form of additional or better quality public facilities than is required to meet the demand created by the development.
- Recurrent funding - VPAs may provide for public benefits that take the form of development contributions towards recurrent costs of infrastructure, facilities and services.

While planning agreements may be used in a wide range of circumstances it is important to identify situations that may prevent Council from considering entering into a planning agreement. Such circumstances are included in the following:

- Where the suspicion may arise that a change to an environmental planning instrument or a development consent can be bought by the highest bidder via a planning agreement.
- When the planning agreement incorporates or suggests an obligation for Council to grant consent to the application the subject of the VPA.
- Where a breach of the Environmental Planning and Assessment Act 1979 (EP&A Act) or other Act may result from the provisions of a planning agreement.
- Council will avoid, wherever possible, entering a VPA where Council has a direct stake in the development.

FORM OF DEVELOPER CONTRIBUTIONS ORDINARILY SOUGHT UNDER A PLANNING AGREEMENT

Development contributions to be used for, or applied towards a public purpose under a planning agreement can be:

- Monetary contributions,
- The dedication of land free of cost,
- Any other material public benefit, or

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- Any combination of the above.

Public purpose is defined in section 93F(2) of the Environmental Planning and Assessment Act, 1979 (the Act) to include the provision of, or the recoupment of the cost of providing public amenities and public services, affordable housing, transport or other infrastructure. It also includes the funding of recurrent expenditure relating to such things as the monitoring of planning impacts of development and the conservation or enhancement of the natural environment.

Section 93F(4) of the Act provides that a provision of a planning agreement is not invalid by reason only that there is no connection between the development and the object of the expenditure of any money required to be paid under the provision.

KINDS OF PUBLIC BENEFITS ORDINARILY SOUGHT AND, IN RELATION TO EACH KIND OF BENEFIT, WHETHER IT INVOLVES A PLANNING BENEFIT

The kinds of public benefits ordinarily sought are those often provided for by the developer contributions system including but not limited to open space provisions, recreational and sports facilities, community facilities, car parking, road and traffic facilities, drainage structures, environmental protection, streetscape and other public domain improvements. Each of these can include a planning benefit. Contributions made by developers towards public purposes that are wholly unrelated to their development are discouraged.

In accordance with section 93F(A) of the Act development contributions provided for in a planning agreement do not have to bear a connection with the development as required by section 94.

Examples of possible contributions, dedications or material public benefits that may be considered appropriate for a planning agreement include:

- A monetary contribution on an 'equivalent tenement' toward the provision of community facilities in the Lithgow Local Government Area.
- Embellishment of existing open space areas.
- Dedication and embellishment of active and passive open space.

The following provides an example of possible inclusions in a planning agreement:

- The developer shall pay to Council an amount of (to be negotiated) per allotment created for residential purposes toward the provision of community facilities in the Lithgow Local Government Area.
- Full embellishment of the passive open space generally as outlined in (the developers offer) including weed removal, a shared access pathway/cycleway and seating.
- Provide as part of the lands the subject of the development application at least (area to be determined – for example in accordance with a DCP requirement) of land for active open space purposes and embellish the lands prior to the issue of a subdivision certificate with at least the following:
 - A mixture of (to Council's satisfaction) new playground equipment, greenspace, skateboard and/or bicycle "ramp" facilities, basketball/netball practice

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facilities (eg part of a court area and hoop)

- Seating and tables
- The area is to be suitably landscaped and turfed with low maintenance lawn and fitted with an irrigation system
- Alternatively, the developer may choose to pay Council an amount of (to be negotiated) per allotment created for residential purposes in respect of active open space required as a result of the development.

▼ Pooling and progressive application of contributions to various public benefits

Council is required to disclose that monetary contributions paid under different planning agreements may be pooled and progressively applied towards the provision of public benefits that relate to the various agreements. Planning agreements should specifically provide for this mechanism. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

Pooling may not be practicable or necessarily appropriate where few planning agreements are enacted, particularly if these are not geographically proximate.

PROCEDURES FOR REPORTING DRAFT VOLUNTARY PLANNING AGREEMENTS TO COUNCIL

The passage of a Voluntary Planning Agreement shall be reported to Council at the following stages of the process:

- Details of draft Planning Agreement – seeking Council's approval to place the draft agreement on public exhibition.
- Finalisation of Planning Agreement - Final endorsement to enter into the Voluntary Planning Agreement following public exhibition.

▼ Discharging of Developers Obligations

Other than complying with the terms of the agreement, other circumstances that may require the discharge of the developer's obligations relating to a planning agreement include the following:

- Material changes to the planning controls applying to the land to which the agreement applies;
- A material modification to the development consent to which an agreement relates;
- The lapsing of the development consent to which an agreement relates;
- The revocation or modification of a development consent to which an agreement relates by the Minister;

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- Other material charges in the overall planning circumstances of an area affecting the operation of the planning agreement.

Refunds

Refunds of monetary development contributions made under the agreement are available if public benefits are not provided in accordance with the agreement and such a provision regarding a refund is included in the relevant agreement.

Dispute Resolution

Council will provide dispute resolution provisions in every VPA.

Enforcement Mechanisms

Council may provide enforcement provisions in each VPA.

GST Considerations

VPA's under Section 93F of the Environmental Planning and Assessment Act are exempt from GST. (ATO Ruling CR 2013/13)

Maintained by Department:	Environment & Development	Approved by:	Council	Effective Date:	4/12/2006
Reference:	Dataworks: Policy Register	Council Policy No:	7.12	Last Date of Review	15/10/2007
Min No:	V1 - 06-414 V2 – TBA	Version No:	2	Reviewed Date:	<u>August 2014</u>
Attachments:					

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Appendix A – Planning Agreement & Explanatory Note

<sp>Template and Model Development Consent Condition

¶

¶ This template was obtained and modified from the DIPNR Development Contributions

¶ Practice Notes –

July 2005 on the Department of Planning website

¶ (www.planning.gov.nsw.au) on

¶ 27 September 2005

¶ The template includes:

¶ 1. Planning Agreement

¶ 2. Explanatory Note

¶ 3. Model development consent conditions

¶ <sp>Prior to use the Department of Planning website should be accessed to obtain the current practice notes and accompanying template. These practice notes are designed to be regularly updated and failure to use the current practice may lead to significant legal and financial repercussions for Council.

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METHOD FOR DETERMINING THE VALUE OF PUBLIC BENEFITS AND WHETHER THAT METHOD INVOLVES STANDARD CHARGING

Public benefits are negotiated on a case by case basis, however, standardised development contributions sought under planning agreements can streamline negotiations and provide predictability and certainty for developers. These can not always be applied due to the unique circumstances of each case. The minimum value of public benefit, not including planning benefit, to be provided by the developer will be based on the calculated value of developer contributions that would be required under the applicable contributions plans.

The developer being cognisant of the applicable contribution plans can calculate this value and decide which elements might be negotiated in a planning agreement process. This provision aims to ensure that the community is not disadvantaged by the use of a planning agreement wholly or partly in place of section 94 or section 94A contributions.

Where land is to be dedicated for public purposes the value of such land is to be provided by the Valuer-Generals Office. The purpose being to ensure that short term market fluctuations do not significantly disadvantage either party entering the planning agreement.

Where construction work is to be undertaken to provide a public benefit a formal itemised quote is required specific to the proposed construction. This quote is then to be compared to Council's internal valuation of the work. An independent third party may also prepare comparable quote, however, both parties must agree to the suitability of the third party prior to the quote being provided.

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In summary, a flexible process is needed to account for the particular circumstances of the development and this process in itself degrades the application of standard charges. However, the relation to the applicable contributions plans provides a basis to establish the value of public benefits. The value of such public benefits under a planning agreement will never be less than the required section 94 or section 94A contributions.

(NB – The proposed planning agreement is to be reported to Council prior to going on public exhibition)

- Submission of Development Application (DA) - with draft planning agreement.
- DA process - consultation (public authorities & developer), amendments to VPA.

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Public notification - exhibition for 28 days minimum

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must be by resolution of Council)

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- Notification – to the Minister for Planning and public as specified.

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- Registrations - with land and in Council register.
- Public Access and reporting – a public register is to be maintained and Council is to report on VPAs entered into in the past year in its Annual Report.

The process of negotiating and entering into a planning agreement is complex and involved.

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Examples of possible contributions, dedications or material public benefits that may be considered appropriate for a planning agreement include:

- A monetary contribution on an 'equivalent tenement' toward the provision of community facilities in the Lithgow Local Government Area.
- Embellishment of existing open space areas.
- Dedication and embellishment of active and passive open space.

The following provides an example of possible inclusions in a planning agreement:

- The developer shall pay to Council an amount of (to be negotiated) per allotment created for residential purposes toward the provision of

community facilities in the Lithgow Local Government Area.

- Full embellishment of the passive open space generally as outlined in (the developers offer) including weed removal, a shared access pathway/cycleway and seating.
- Provide as part of the lands the subject of the development application at least (area to be determined – for example in accordance with a DCP requirement) of land for active open space purposes and embellish the lands prior to the issue of a subdivision certificate with at least the following:

A mixture of (to Council's satisfaction) new playground equipment, green space, skateboard and/or bicycle "ramp" facilities, basketball/netball practice facilities (eg part of a court area and hoop)

Seating and tables

The area is to be suitably landscaped and turfed with low maintenance lawn and fitted with an irrigation system

Alternatively, the developer may choose to pay Council an amount of (to be negotiated) per allotment created for residential purposes in respect of active open space required as a result of the development.

Planning Agreement Template

A planning agreement, explanatory note template and model development consent condition is provided in Appendix A of this Policy.

POLICIES REGARDING RELATED MATTERS

Review and Modification

Council is required to develop a standardised practice to monitor the implementation of planning agreements in a systematic and transparent way. Monitoring systems enable information about the implementation of planning agreements to be made readily available to public agencies, developers and the community. Planning agreements should contain a mechanism for their periodic review that should involve the participation of all parties.

Planning agreements should set out the circumstances in which the parties agree to modify the developer's obligations under the agreement. Such a modification should be effected by an amendment to the agreement. The circumstances that may require the modification of a planning agreement include the following:

- Material changes to the planning controls applying to the land to which the agreement applies;
- A material modification to the development consent to which an agreement relates;

- The lapsing of the development consent to which an agreement relates;
- The revocation or modification of a development consent to which an agreement relates by the Minister; and
- Other material changes in the overall planning circumstances of an area affecting the operation of the planning agreement.

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Planning agreements should not impose obligations on developers indefinitely. Planning agreements should set out the circumstances in which the parties agree to discharge the developer's obligations under the agreement. Fulfilment of all the developer's obligations generally brings about the conclusion of the planning agreement.

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Appendix A – Planning Agreement & Explanatory Note Template and Model Development Consent Condition

This template was obtained and modified from the DIPNR Development Contributions Practice Notes – July 2005 on the Department of Planning website (www.planning.gov.nsw.au) on

27 September 2005

The template includes:

1. Planning Agreement
2. Explanatory Note
3. Model development consent conditions

Prior to use the Department of Planning website should be accessed to obtain the current practice notes and accompanying template. These practice notes are designed to be regularly updated and failure to use the current practice may lead to significant legal and financial repercussions for Council.

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PLANNING AGREEMENT

Parties

LITHGOW CITY COUNCIL of 180 MORT STREET, LITHGOW, New South Wales
(Council)

and

of ##, New South Wales (Developer).

Background

(For Development Applications)

- A. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

(For Changes to Environmental Planning Instruments)

- A. On, ##, the Developer made a submission to the Council relating to the Instrument Change for the purpose of making a subsequent Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change submission was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities in relation to the Development Consent.
- C. The Instrument Change was published in NSW Government Gazette No. ## on ## and took effect on ##.
- D. On, ##, the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

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1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

[Drafting Note 1: Specify the land to which the Agreement applies and the development to which it applies]

3 Operation of this Agreement

[Drafting Note 2: Specify when the Agreement takes effect and when the Parties must execute the Agreement]

4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979 (NSW).

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means ##

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any

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other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means ## Local Environmental Plan ##.

Land means Lot ## DP ##, known as ##.

Party means a party to this agreement, including their successors and assigns.

Public Facilities means ##.

Regulation means the Environmental Planning and Assessment Regulation 2000.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

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- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.

[Drafting Note 3: Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made]

6 Application of the Development Contributions

[Drafting Note 4: Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied]

7 Application of s94 and s94A of the Act to the Development

[Drafting Note 5: Specify whether and to what extent s94 and s94A apply to development the subject of this Agreement]

8 Registration of this Agreement

[Drafting Note 6: Specify whether the Agreement is to be registered as provided for in s93H of the Act]

9 Review of this Agreement

[Drafting Note 7: Specify whether, and in what circumstances, the Agreement can or will be reviewed and how the process and implementation of the review is to occur].

10 Dispute Resolution

[Drafting Note 8: Specify an appropriate dispute resolution process]

11 Enforcement

[Drafting Note 9: Specify the means of enforcing the Agreement]

12 Notices

12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that Party at its address set out below.

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- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Council

Attention: ##
Address: ##
Fax Number: ##
Email: ##

Developer

Attention: ##
Address: ##
Fax Number: ##
Email: ##

12.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to

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it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

13 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 Assignment and Dealings

[Drafting Note 10: Specify any restrictions on the Developer's dealings in the land to which the Agreement applies and the period during which those restrictions apply]

15 Costs

[Drafting Note 11: Specify how the costs of negotiating, preparing, executing, stamping and registering the Agreement are to be borne by the Parties]

16 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

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17 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

18 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20 No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

21 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

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22 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

23 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 GST

GST is not applicable to Voluntary Planning Agreements. (ATO Ruling CR 2013/13)

Execution

Dated: ##

Executed as an Agreement: ##

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Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

1. Parties

LITHGOW CITY COUNCIL (Planning Authority)

(Developer)

2. Description of Subject Land

3. Description of the Development Application **or** Change to Environmental Planning Instrument and Subsequent Development Application

4. Summary of Objectives, Nature and Effect of the Draft Planning Agreement

5. Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

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How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

How the Draft Planning Agreement Promotes the Public Interest

For Planning Authorities:

- (a) Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities
- (b) Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted
- (c) Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter
- (d) All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

Other Matters

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Signed and Dated by All Parties

Template Condition of Consent

(Where planning agreement accompanied a development application)

##. Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979, the planning agreement that relates to the development application the subject of this consent must be entered into before [Insert Requirement].