

Hay Shire Council Policy



Title of Policy	Planning Agreements		
This applies to	Hay Shire Local Government Area		
Author	David Webb	Date Approved:	28 October 2025
Position of Author	General Manager	Authorised by:	Council
Legislation, Australian Standards, Code of Practice.	Local Government Act 1993 Part 7 Subdivision 2 of the Environmental Planning & Assessment Act 1979 Part 9 Division 1 of the Environmental Planning & Assessment Regulation 2021 NSW Department of Planning, Industry and Environment Planning Agreements Practice Note 2021 and the draft 2023 Practice Note Department of Planning, Housing and Infrastructure - Benefit-Sharing Guideline, November 2024 Real Property Act 1900		
Related Policies/Procedures	Hay Shire Council Community Strategic Plan Hay Shire Council Delivery Program and Operational Plan Hay Shire Council Developer Contributions Plan 2025 Fundamental Principles for Successful Renewable Development in Hay LGA, December 2023 Renewable Energy Community Benefit Framework		
Attachments	Nil		
Aim	This policy establishes Hay Shire Council’s framework for the negotiation, assessment, execution, and implementation of Planning Agreements under the Environmental Planning and Assessment Act 1979 (NSW). It ensures that planning agreements are used effectively to deliver public benefit, support sustainable rural development, and enhance community infrastructure in line with Hay Shire’s strategic goals.		
Version	Details	Date	
Version 1.2	Initial Issue	August 2025	
To be reviewed	This policy will be reviewed every four years or sooner in response to legislative changes, shifts in local strategic planning, or emerging infrastructure priorities.		
Superseded Policies	Nil		
The Policy			

Purpose

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This Policy sets out the Council's policy and procedures relating to Planning Agreements (PAs) under section 7.4 of the Environmental Planning & Assessment Act (the Act).

The purpose of this Policy is to:

- establish a fair, transparent and accountable framework relating to the Council's use of PAs,
- support innovative and flexible approaches to the delivery of infrastructure and other public benefits consistent with Council's strategic and infrastructure plans,
- ensure participants in the negotiation of PAs understand their roles and responsibilities to maintain the highest standards of probity,
- set out Council's specific policy position and procedures relating to the use of PAs,
- promote public participation and to allow the community to gain understanding of the benefits of an appropriate PA

Overview

A Planning Agreement is a voluntary agreement or other arrangement between Council and a developer that allows developers to contribute towards a public purpose, including through the dedication of land, provision of monetary contributions, public infrastructure, community facilities or affordable housing, or any other material public benefit.

Planning agreements are separate from but complement the Council's Contributions Plans levied in accordance with section 7.12 of the Act.

While Section 7.12 plans must show a general connection between infrastructure and demand, Planning Agreements should generally support infrastructure that is at least partly related to the development.

Planning Agreements provide flexibility to deliver public benefits to manage the impacts of the development. Renewable energy projects (like solar or wind farms) generally have minimal infrastructure demands and do not generate a direct demand for local services like parks, roads, or community centres. In such cases, a PA is used in place of a section 7.12 contribution to secure community benefits.

A Planning Agreement can supplement a standard contribution plan when the standard contribution plan is not adequate to offset the full community impact, or the developer agrees to contribute additional funding, services, or infrastructure voluntarily.

Scope

This policy applies to all planning agreements entered into by Hay Shire Council under Part 7 Division 7.1 of the Environmental Planning and Assessment Act 1979 (the Act), including:

- Rezoning requests (planning proposals);
- Development applications (DAs); and
- Modifications to existing consents.

A Renewable Energy Planning Agreement (REPA) is an agreement under Section 7.4 of the Act between a developer and council, typically associated with large scale renewable energy developments like solar farms, wind farms, or battery storage projects, and connected with the South West Renewable Energy Zone.

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REPA's are intended to deliver long term community benefits that arise from such developments, ensuring local communities share in the economic and social benefits of the renewable energy transition. A REPA may be included under Development Approval Conditions of Consent, and is to align with the Department of Planning, Housing and Infrastructure - Benefit-Sharing Guideline, November 2024, including not imposing any additional conditions requiring other contributions under section 7.12 of the Act unless they are specifically required to address direct impacts on services and infrastructure.

Policy Statement

Hay Shire Council may enter into a planning agreement where a proponent offers to provide public benefits—monetary or in-kind—either in addition to or in place of standard Section 7.11 or Section 7.12 contributions.

Planning agreements are not mandatory, but Council encourages proponents of larger or strategically significant developments to consider offering public benefits that respond to local infrastructure needs and community aspirations.

The statutory scheme for PAs

Division 7.1 of Part 7 of the Act establishes a statutory scheme for contributions by developers to planning authorities, including local councils in connection with development. The scheme has compulsory and voluntary elements.

Clause 203 of the Regulation contains further requirements related to the making of voluntary planning agreements. These requirements are not reproduced in this Policy.

Departmental Practice Notes and Directions

This Policy is generally consistent with the NSW Department of Planning, Industry and Environment Planning Agreements Practice Note 2021 and the draft 2023 Practice Note.

The practice note recognises that planning agreements can be complex and there is no standard approach. The practice note may assist parties to prepare planning agreements and must be considered by Council when negotiating or entering into a planning agreement. (cl 203(7) of the Regulation).

When negotiating a planning agreement which provides for affordable housing Council must consider the Environmental Planning and Assessment (Planning Agreements) Direction 2019.

Corporate strategic planning context

PAs have an important strategic role supporting the implementation of a Council's Community Strategic Plan through provision of funding and works for key projects.

Prepared in accordance with the Local Government Act 1993, Council's corporate strategic planning documents include the Community Strategic Plan (CSP) and Delivery Program / Operational Plan. These documents set out Council's strategic priorities for the Shire supported by financial planning and asset management planning, and the main activities it proposes to undertake to implement the priorities.

The four key directions in Council's CSP are:

- Social

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- Environmental
- Economic
- Civic Leadership

When preparing a PA, Council will endeavour to achieve outcomes consistent with these key directions.

Land use planning context

PAs also have a strategic role in achieving specific land use planning outcomes envisaged by the adopted CSP and Local Strategic Planning Statement (LSPS). In some circumstances, PAs can provide the mechanism to deliver the following outcomes:

- Enduring – delivering long-term legacies for future generations.
- Strategic – aligned with the community's shared priorities.
- Coordinated – complementary across multiple projects.
- Inclusive – geographically and socioeconomically fair.

Council's objectives for the use of PA's

This policy aims to:

- Promote transparency and consistency in the use of planning agreements.
- Ensure planning agreements deliver genuine public benefits that reflect community needs.
- Provide flexibility in addressing infrastructure and service requirements beyond standard development contributions.
- Align planning agreements with Council's strategic plans, particularly the Community Strategic Plan, Delivery Program, and Operational Plan

Guiding principles for use of PAs

All planning agreements must:

- Deliver Public Benefit: Provide infrastructure, facilities, or services that benefit the Hay community.
- Be Transparent and Accountable: Be subject to public exhibition and resolved by Council.
- Be Fair and Reasonable: Reflect the scale and impact of the proposed development.
- Be Voluntary: Not be used as a condition or incentive to gain planning approval.
- Be Consistent with Strategic Planning: Align with the Council's land use, infrastructure, and community plans.
- Ensure No Improper Influence: Planning decisions must not be influenced by the prospect of a PA.

Acceptability test

Planning Agreements are to be assessed against the following acceptability test for determining the acceptability of a Planning Agreement. The acceptability test requires that Planning Agreements:

- are directed towards legitimate planning purposes, which can be identified in the statutory planning controls and other adopted planning strategies and policies applying to development;
- provide for the delivery of infrastructure or public benefits not wholly unrelated to the development;
- produce outcomes that meet the general values and expectations of the public and protect the overall public interest;

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- provide for a reasonable means of achieving the desired outcomes and securing the benefits; and
- protect the community against adverse planning decisions.

Types of Contributions

Planning agreements may include the provision of:

- Monetary contributions;
- Dedication of land;
- Construction of public infrastructure (e.g., roads, footpaths, water/sewer upgrades);
- Community facilities (e.g., halls, sporting fields);
- Environmental protection or enhancement (e.g., landscaping, biodiversity offsetting);
- Affordable or aged housing;
- Childcare or health infrastructure;
- Other agreed public benefits

Purpose of contributions

The Act allows development contributions made under PAs to be used for or applied towards a public purpose.

Public purposes include, without limitation,

- the provision of (or the recoupment of the cost of providing) public amenities or public services,
- the provision of (or the recoupment of the cost of providing) affordable housing,
- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- the monitoring of the planning impacts of development,
- the conservation or enhancement of the natural environment.

Without limiting the types of public benefits that the Council may seek through PAs, the Council may seek public benefits that:

- 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,
- meet the demands created by the development for new public infrastructure, amenities and services,
- address a particular deficiency or deficiencies in the existing provision of public facilities in the Council's area,
- achieve recurrent funding in respect of public facilities,
- prescribe inclusions in the development that meet specific planning objectives of the Council,
- monitor the implementation of development,
- secure planning benefits for the wider community.

Negotiation Process

Planning Agreements typically involve a negotiated agreement between Council and the developer, encompassing the following steps:

1. Initial Offer: The proponent submits a Letter of Offer outlining the proposed public benefits.

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2. Preliminary Assessment: Council staff review the proposal for alignment with this policy.
3. Negotiation: Terms are negotiated with the proponent, and legal, financial, or technical input may be sought (at the proponent's cost if necessary).
4. Drafting and Exhibition: A draft Planning Agreement and Explanatory Note are prepared and placed on public exhibition for at least 28 days.
5. Council Resolution: The agreement is referred to a Council Meeting for determination.
6. Execution and Registration: Once approved, the PA is signed and registered on title if required.
7. Monitoring: Delivery of contributions is monitored against agreed milestones.

For large scale renewable energy developments that are associated with the South West Renewable Energy Zone and that is either State significant development (SSD) or critical State significant infrastructure (CSSI), the Department of Planning, Housing and Infrastructure - Benefit-Sharing Guideline, November 2024, outlines the total funding for benefit-sharing that forms the basis of any REPA with Council.

Assessment Criteria

Council will consider the following in evaluating a proposed planning agreement:

- Value for money and community need;
- Timing, delivery, and enforceability of the contributions;
- Alignment with Council's strategic priorities;
- Any recurrent cost implications to Council.

Commencement of PA

A PA commences when:

- it is signed by all the parties, or
- each separate executed counterparts are exchanged.

Council will generally require a Planning Agreement to provide that the developer's obligations under the agreement take effect when the first development consent operates in respect of development that is the subject of the agreement.

Contributions will usually be required to be made prior to the issuing of a construction certificate, subdivision works certificate, occupation certificate or subdivision certificate in respect of the development.

Indexation

All monetary amounts to which development contributions under a PA applies are to be adjusted or indexed in accordance with the method of adjustment or indexation provided for in the Contributions Plan.

If a Contributions Plan does not apply to development contributions under a PA, monetary amounts relating to the contributions will be adjusted or indexed in accordance with the method agreed by negotiation between the Council and the Developer.

Pooling of Development Contributions

Where a proposed Planning Agreement provides for a monetary contribution by the developer, Council may seek to include a provision permitting money paid under the PA to be pooled with

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money paid under other PA's 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 community benefits to be provided in a fair, more efficient and equitable way.

Land dedication

Ordinarily, any land which is required to be dedicated or transferred to the Council under a PA must be dedicated or transferred free of encumbrances.

In respect of any dedication or transfer of land to the Council, or the creation of any interest in land in the Council's favour under a PA, the Developer will be responsible for preparing all documents and meeting all costs relating to the following:

- removing an encumbrance on the title,
- creating an interest in land in the Council's favour,
- subdividing land,
- preparing and lodging documents for registration,
- obtaining the consent of any to registration,
- dealing with any requisition from Land and Property Information NSW Land Registry Services relating to any dealing lodged for registration.

Security for performance

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

Unless otherwise agreed by the parties in a particular case, the form of security will usually, but not necessarily, be an unconditional bank guarantee from an Australian Bank in favour of the Council to the full value of the developer's provision under the Planning Agreement and on terms otherwise acceptable to Council.

Other forms of security that Council may require include the following:

- Where the Planning Agreement provides for benefits to be paid in the form of a monetary contribution, that the contribution be made prior to the issue of a construction certificate, subdivision works certificate, occupation certificate or a subdivision certificate.
- Where the Planning Agreement provides for works to be carried out, a bond or bank guarantee from an Australian bank in favour of Council should be provided for at least the agreed estimated value of the works, and on terms otherwise acceptable to Council.
- Where the Planning Agreement provides for the dedication of land to Council, a Planning Agreement must include a provision that enables the Council to compulsorily acquire the land for A\$1.00 in the event of a breach of the agreement by the developer.
- Council may require the Planning Agreement to be registered on the title of the land to which it applies.
- Council may also require any financial security that is provided to be indexed according to the same index as the contributions to which it relates.

Registration

Section 7.6 of the Act provides that a PA can be registered under the Real Property Act 1900. Registration requires the agreement of all persons having a registered interest in the land, including mortgagees, charges, lessees and the like.

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Indemnity

The Developer will be required to indemnify the Council from and against all claims that may be sustained, suffered, recovered or made against the Council arising in connection with the carrying out of works under the PA except if, and to the extent that, the claim arises because of the Council's negligence or default.

Notations on section 10.7 Planning Certificate

The Council will generally require a PA to contain an acknowledgement that the Council may, at its absolute discretion, make a notation under s10.7(5) of the Act to the effect that the land is subject to the PA on any certificate issued under s10.7 of the Act relating to the land the subject of the agreement.

Monitoring and review

The Council will continuously monitor the performance of the Developer's obligations under a PA. The Council will require a PA to contain provisions requiring the Developer at its cost to report periodically to the Council on its compliance with obligations under the PA. The Council may require a PA to contain provisions establishing a mechanism under which the PA is periodically reviewed by the parties. For the purposes of addressing any matter arising from a review of a PA the parties may agree on and implement appropriate amendments to the PA.

Council may establish an infrastructure contributions governance committee to oversee all infrastructure contributions and planning agreements. The Committee, if established, is to comprise of senior council officers from each relevant section of the council and chaired by the General Manager or other appropriate person. All decisions by the committee should be formally documented and made publicly available when appropriate.

For State significant development (SSD) or critical State significant infrastructure (CSSI), such as large scale renewable energy projects, a Community Consultative Committee (CCC) or Community Benefit Fund Governance Committee in the case for a REPA, will be required to monitor the PA.

Council will include infrastructure contributions considerations in its Fraud and Corruption Control Framework. The framework will identify and manage the specific risk of fraud and corruption present within the infrastructure contributions system and include prevention and monitoring strategies.

Council will have in place internal controls to manage risks associated with security of contributions data. Additionally, Council will undertake internal audits periodically to ensure contributions are being managed and spent appropriately, as well as include in its annual report particulars of compliance with and the effect of the planning agreements during the year to which the report relates.

Amendment

PAs can be amended by agreement between the parties. Either party can initiate an amendment. The parties will be required to act co-operatively, reasonably and in good faith in considering any request to amend a PA. Amendment will generally occur by means of a deed of variation to the PA in a form acceptable to Council. The party proposing the amendment must bear the other party's costs of the modification.

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Discharge of PA

The Developer must ensure that the public benefits are provided by the date or milestone identified in the planning agreement. For works in kind, the Council will inspect and provide confirmation in writing that the works have reached completion.

A Developer may be discharged from its obligations under a PA in certain circumstances. These include:

- the Developer's obligations have been fully carried out in accordance with the PA,
- the Development Consent to which the PA relates has lapsed, or it has been modified to such an extent that the Developer's obligations may no longer apply,
- the performance of the PA by the Developer has been frustrated by an event or events beyond the reasonable control of the parties, such as a change in planning controls,
- the Developer has transferred the land to which the PA relates or assigned its interest under the PA or novated the PA on terms agreed to by the Council,
- other material changes affecting the operation of the PA have occurred, and
- the parties have entered into a new PA or other suitable arrangement,
- the Council and the Developer otherwise agree to the discharge of the PA

Preparation and form of PA

The Council will have responsibility for preparation of a PA. Typically PA's will be prepared by a legal firm engaged by Council at the proponent's cost. However, Council may accept a draft PA prepared by a proponent at its discretion.

Council may prepare templates for PAs and associated explanatory notes to assist proponents.

Depending on the nature of the public benefit proposed, some clauses in template PA's may not apply. For example, if the public benefit is solely a monetary contribution, clauses regarding developer works may not be necessary.

Some provisions are standard for every PA to comply with the Act and Regulations.

Council's costs of negotiating, entering into, monitoring and enforcing a PA

Council may require a Planning Agreement to make provision for payment by the developer of part or all of the Councils' costs of and incidental to:

- a) negotiating, preparing and entering into the Planning Agreement;
- b) registering and removing the Planning Agreement on and from the title of any relevant land; and
- c) enforcing the Planning Agreement.

The amount to be paid by the developer will be determined by negotiation in each case. In particular cases, the Council may require the Planning Agreement to make provision for a development contribution by the developer towards the on-going administration of the agreement.

Dispute resolution

Council will require a Planning Agreement to provide for mediation of disputes between the parties to the agreement, at their own costs, before the parties may exercise any other legal rights in relation to the dispute. Unless the parties agree otherwise, the Planning Agreement will provide that such mediation will be conducted pursuant to the Mediation Rules published by the Law Society of New South Wales current at the time the agreement is entered.

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Hand-Over of Works

Council will generally not accept the hand-over of a public work carried out under a Planning Agreement unless the developer furnishes to the Council a certificate to the effect that the work has been carried out and completed in accordance with the agreement and any applicable development consents (which certificate may, at the Council's discretion, be a final occupation certificate, compliance certificate or a subdivision certificate) and, following the issue of such a certificate to the Council, the work is also certified as complete by a Council building surveyor or engineer. Council will also require the Planning Agreement to provide for a defects liability period during which any defects must be rectified at the developer's expense and for security to be held by Council on account of defects.

Developer not the owner

Where the developer is not the owner of the land to which a Planning Agreement applies, Council will usually require the owners of that land be party to the Planning Agreement.

Public Disclosure and Register

All planning agreements will be:

- Publicly exhibited in accordance with legislative requirements (In accordance with the Act, all draft PAs will be publicly notified for a minimum period of 28 days)
- Reported in Council's business papers and minutes;
- Listed in Council's Planning Agreement Register, which is publicly accessible via Council's website;
- Reviewed for compliance on an annual basis.

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, or the formal consideration by the Council, or for any other reason.

Explanatory Notes

The Regulation requires that an Explanatory Note is provided with the public notice of a Planning Agreement. The Explanatory Note can be prepared by one of the parties but should be reviewed and agreed on by any other party to the agreement. The Explanatory Note must help the broader community to simply and clearly understand what a Planning Agreement is proposing, how it delivers public benefit, and why it is acceptable and in the public interest. It should be easy to understand, written in plain English and address all considerations outlined the Practice Notes.

The Explanatory Note must:

- be written in plain English and address all considerations outlined in the Practice Notes and this Policy;
- summarise the objectives, nature and effect of the proposed Planning Agreement and contain an assessment of the merits of the proposed agreement, including the impact on the public or relevant section of the public;
- identify how the Planning Agreement promotes the public interest;
- identify whether the Planning Agreement conforms with Council's capital works program, if any;

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- state whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate, subdivision works certificate or subdivision certificate is issued; and
- indicate timing of delivery and include maps, diagrams and other material to help explain what is proposed.

Probity Matters

Public probity is important to Council and consideration of an Offer/proposed Planning Agreement will be undertaken in a manner that is fair, transparent and directed at achieving public benefits in free of corruption or perception of bias.

To this end, the following practices will apply:

- a) Roles and responsibilities within the processes for a Planning Agreement, a planning proposal and a development application will be managed to ensure transparency, impartiality and accountability and to avoid conflicts of interest. This will generally include separation of roles and responsibilities.
- b) Commercial and financial information will be treated as confidential material.
- c) Not allowing the interests of individuals or interest groups to outweigh the wider public interest when decided whether to enter into Planning Agreements.
- d) Allowing the public to access and download this Policy and all executed Planning Agreements from Council's website.
- e) Where Council has a commercial interest in a development the subject of a Planning Agreement, that appropriate steps are taken to ensure conflicts or interests are avoided or managed.
- f) Working with proponents to establish clear timeframes to progress Planning Agreements efficiently and actively communicate the status of the Planning Agreement.
- g) Publicly notify proposed Planning Agreements in accordance with the EPA Act and the Regulation.
- h) Not approving development that is unacceptable on planning grounds because of public benefits offered by developers through the Planning Agreement process.

Separation of staff responsibilities within the Council

If the Council has a commercial interest in the subject matter of a PA as a landowner, developer or financier, the Council will ensure that the person assessing the application to which a PA relates is not the same person or a subordinate of the person who negotiated the terms of the PA on behalf of the Council in its capacity as landowner, developer or financier.

Involvement of Councillors in PA negotiation process

Councillors will not be involved in the face to face negotiations of any PA.

Delegations

The General Manager has delegated authority to negotiate draft agreements in accordance with this policy. However, all planning agreements must be endorsed by formal resolution of Council before execution.

Review

This policy will be reviewed every four years or sooner in response to legislative changes, shifts in local strategic planning, or emerging infrastructure priorities.

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