



Procedure

Affordable Housing Contribution

2020

(to accompany the Affordable Housing Contribution Policy 2020)

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Further Document Information and Relationships

Related Legislation	<ul style="list-style-type: none"> • NSW <i>Environmental Planning and Assessment Act 1979</i> - Section 7.32 & Section 7.11 • NSW Environmental Planning and Assessment (Planning Agreements) Direction 2019 • Byron Local Environmental Plan 2014 – Clause 6.7 Affordable housing in residential and business zones
Related Policies	<ul style="list-style-type: none"> • Affordable Housing Contribution Policy 2020 • NSW State Environmental Planning Policy No 10: Retention of Low Cost Rental Accommodation • NSW State Environmental Planning Policy No.70 Affordable Housing (revised Schemes)
Related Standards, Procedures, Statements, documents	<ul style="list-style-type: none"> • Byron Shire Draft Residential Strategy • Byron Shire Council Community Participation Plan • NSW Department of Planning & Environment Practice Note Planning Agreements 2016 • NSW Department of Planning & Environment Guidelines for Development Affordable Housing Contribution Schemes (NSW Govt. Feb

[2019\)](#)

- NSW Department of Planning & Environment [A guide to preparing planning proposals](#)

Note: Any reference to Legislation will be updated in the Procedure as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.



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1. Purpose and Scope

The Byron Shire Affordable Housing Contribution Policy (AHCP) offers a framework to advocate for, facilitate, provide and manage affordable housing contributions in Byron Shire.

This document, 'Procedures to accompany Affordable Housing Contributions Policy' (Procedures) is intended to assist with implementation of the policy and sets in more detail how Council intends to operate the contribution framework in Byron Shire.

Regulations, SEPP 70, S119 Directions, [Environmental Planning and Assessment \(Planning Agreement\) Direction 2019](#) and the [Guidelines for Development Affordable Housing Contribution Schemes \(NSW Govt. Feb 2019\)](#) also help to inform the terms under which contributions for affordable housing can be accepted/required.

2. Affordable Housing Contribution Rates

AHCP Statement of Intent 14 guides the Residential Strategy to set a minimum affordable housing contribution rate for areas based on Council's understanding of development feasibility. In doing so, Council is looking to achieve the following rates:

Greenfield Investigation Areas

- Mullumbimby private land greenfield housing contribution areas: 20% of the additional lots or developable area whichever the greater that is to be used for residential uses
- Mullumbimby Council land greenfield housing contribution areas: 30% of the additional lots or developable area whichever the greater that is to be used for residential uses.
- Bangalow greenfield housing contribution areas: 20% of the additional lots or developable area whichever the greater that is to be used for residential uses.
- Belongil greenfield housing contribution area: 20% of the additional lots or developable area whichever the greater that is to be used for residential uses.

Infill Investigation Areas

- Mullumbimby old hospital Council land housing contribution area: 30% of the additional dwellings or total gross floor area that is to be used for residential uses
- Byron Bay Town Centre housing contribution area: 6% of the additional total gross floor area that is to be used for residential uses and 2% of non- residential total gross floor area

The rate is set at a higher level for Council land as it is assumed Council will not be seeking the same return on investment margin as a property developer. The private land feasibility includes a 10 - 15% risk margin, usually expected by financiers.

In the interest of transparency, Table 1: Investigation areas affordable housing yield shows potential affordable dwellings yields for each area when applying the above rates. The areas listed have been publicly exhibited as investigation areas for upzoning in forward planning documents and/or a planning proposal.

**Table 1: Investigation areas affordable housing yields**

Area	Potential rental affordable housing yield	Activating referencing document
Mullumbimby non Council land	68 dwellings	Residential Strategy
Mullumbimby Lot 22	30 dwellings	Residential Strategy
Mullumbimby old hospital	20 dwellings	Mullumbimby Master Plan
Bangalow	48 dwellings	Residential Strategy
Belongil	4 dwellings	Residential Strategy
Byron Bay town centre	20 dwellings	Byron Town Centre Master Plan & 26.2017.6.1 Planning Proposal – FSR removal

3. Contribution setting process

Consistent with NSW Government - [A guide to preparing planning proposals](#), Council strongly recommends that the process commence with a pre-lodgement meeting. A pre-lodgement meeting will assist Council and the proponent to reach agreement on the key issues and information necessary to justify further consideration of the proposed change to land use or development controls. It will also ensure that a proponent does not commit time and resources undertaking unnecessary studies or preparing information that does not address the main areas of concern with appropriate detail.

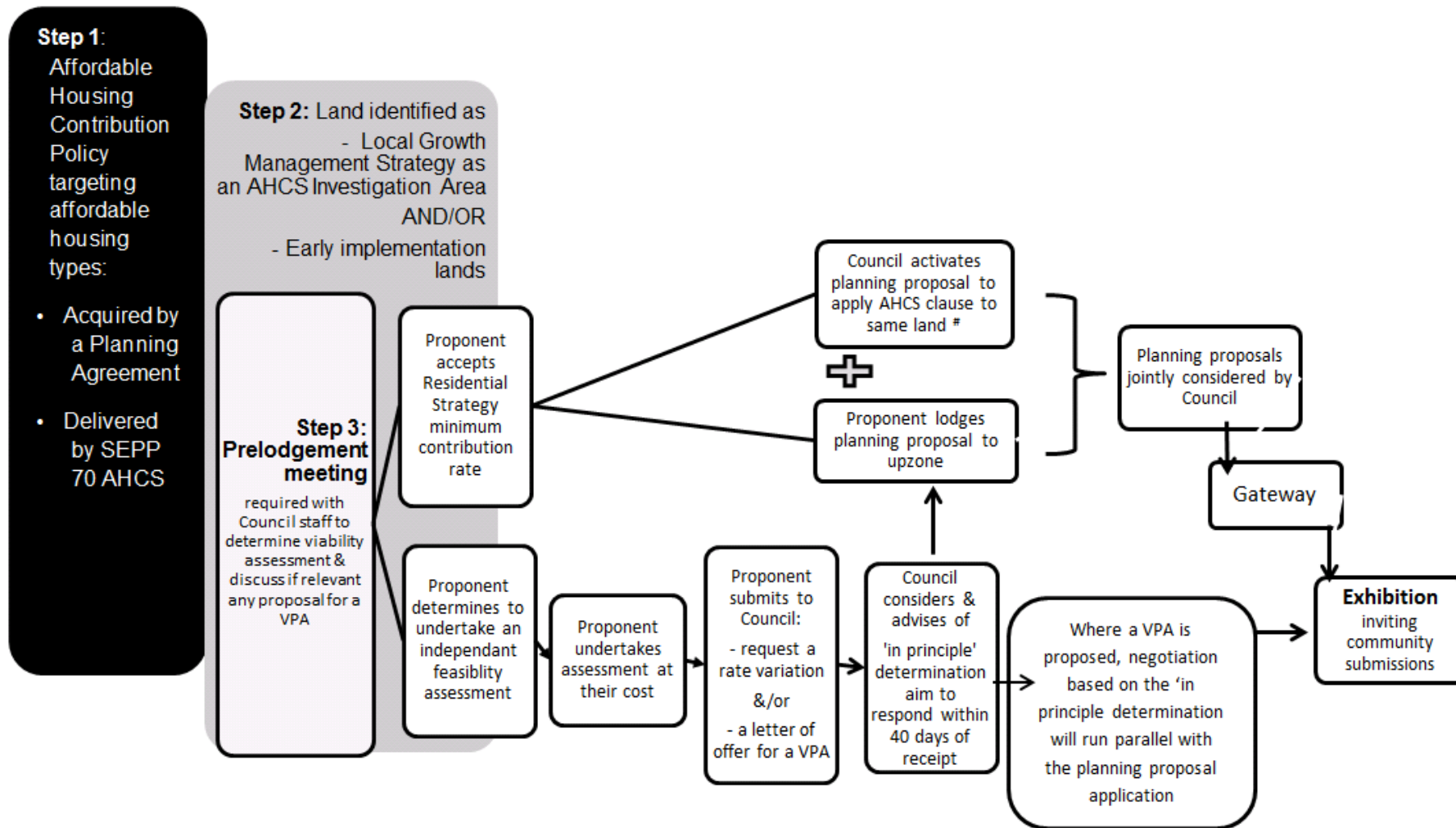
The cost of the meeting is payable prior to pre-lodgement meeting.

Details of all meetings held with Council staff in relation to the proposal should be incorporated within the Planning Proposal.

To assist Council, developers and the community understand the contribution process for an upzoning, flow diagram 1 Contribution setting, sets out the process accompanied by more detailed explanation in Sections 4 & 5.



Diagram 1: Contribution setting



even if the proponent offers a voluntary planning agreement, Council will seek to apply an AHCS clause for the land in LEP 2014



4. Terms guiding an Affordable Housing Contribution Scheme (AHCS)

This section establishes a framework to guide circumstances for affordable housing contribution under an AHCS.

4.1. Establishing contribution Rates

- 4.1.1 Affordable housing contribution schemes will apply to developments that are facilitated by upzoning.
- 4.1.2 As required by NSW Government, Council will undertake viability testing. If found that a contributions levy was generally viable for investigation areas a minimum contribution rate be set in the Residential Strategy or other forward planning document as appropriate.
- 4.1.3 In setting a rate in the Residential Strategy, proponents as part of a planning proposal for the upzoning will have the ability to request a contribution rate variation for their individual precincts/project and AHCS clause.
- 4.1.4 Before making a request for a contribution rate variation a pre-lodgement meeting is to be held with Council staff to discuss the upzoning, alternative contribution rate request and set terms for undertaking an independent viability testing.
- 4.1.5 Council may negotiate an alternative contribution rate request by a developer in connection with any upzoning planning proposal relating to any land in the Council's local government area.
- 4.1.6 Any alternative contribution rate request to Council is to be made by the proponent before lodging a planning proposal application.
- 4.1.7 A request for a contribution rate variation to Council should include as much information as possible including but not limited to the following matters:
 - a) in writing
 - b) be addressed to Council
 - c) be signed by or on behalf of all parties to the request for a contribution rate variation other than the Council to whom the request is made
 - d) outline in sufficient detail to the intent of the planning proposal to allow proper consideration by the Council the matters required to be included in an AHCS.
 - e) address in sufficient detail to allow proper consideration by the Council any relevant matters required to be included in an offer as specified in the AHCP and this procedure



- f) outline in sufficient detail to allow proper consideration by the Council all other key terms and conditions proposed, and
- g) A report, prepared at the cost of the proponent, containing the independent viability testing undertaken in line with the Guidelines for Development Affordable Housing Contribution Schemes (NSW Govt. Feb 2019) if being sought.

4.1.8 In the absence of a statutory timeframe, Council will endeavour to consider the request within 40 days of receipt and advise of the proponent of an 'in principle determination' to enable the proponent to progress with the lodgement of the planning proposal. This in principle determination will provide the basis for the AHCS. Council may decide to delegate this advisory determination process in the interest of efficiency.

4.1.9 The acceptance of a request for an alternative contribution rate is at the absolute discretion of Council. In determining whether to a request the Council is required to take into consideration a number of matters including the nature and value of the public benefit being offered and the matters as set out in the Guidelines for Development Affordable Housing Contribution Schemes (NSW Govt. Feb 2019) and terms for undertaking an independent viability testing set in the pre-lodgement meeting.

4.2. Form of contribution

4.2.1 The contribution rate may be fulfilled using:

- a) a percentage of dedicated floor space
- b) land (may be part of the said land, or other land of the applicant)
- c) monetary contribution or
- d) combination of the above.

4.2.2 A land contribution to Council for the purpose of affordable housing requires the land is fit for purpose.

4.2.3 In lieu contributions for greenfield areas:

- a) The intention is that land for affordable housing should be provided within each proposed development. However, smaller residential developments may not be able to provide affordable dwellings within the site. Alternative arrangements may be made, where an in lieu monetary or dedicate land or floor space elsewhere contribution may be provided so that affordable housing can be provided elsewhere in Byron Shire.
- b) The amount of the in lieu contribution is calculated as equivalent to the additional lots or developable area that would otherwise be required to be dedicated for use for affordable housing as referred to in Section 2.

4.2.4 In lieu contributions for infill areas:



- a) The intention is that the affordable housing should be provided within each proposed development. However, smaller residential developments or commercial developments with no residential component may not be able to provide affordable dwellings within the site. Alternative arrangements may be made, where an in lieu monetary or land contribution may be provided so that affordable housing can be provided elsewhere in Byron Shire.
- b) The amount of the in lieu contribution is calculated as equivalent to the total floor area that would otherwise be required to be dedicated for use for affordable housing as referred to in Section 2.

4.2.5 Pursuant to section 7.32 (3) (a) of *the Act*, Council in preparing an AHCS will have regard to the affordable housing principles before imposing a condition.

4.3. Exemptions

The [Guidelines for AHCS](#) state that an affordable housing contribution scheme will clearly state the types of development that are exempt and why. As a guide Council is not seeking to apply contribution rates to the following development (or so much of any mixed development that consists of the following development types):

- public housing or
- affordable housing or
- community facilities or
- residential purposes that will result in the creation of less than 200 square metres of total floor area or
- non-residential purposes that will result in the creation of less than 60 square metres of total floor area or
- a public road, a light rail or railway undertaking or a public utility undertaking or facility or
- refurbishment of non-residential or residential development when no change of use or increase in floor space areas occurs
- SEPP Infrastructure
- child care centres
- schools
- certain health facilities.

5. Planning Agreements

This section of the Procedure establishes a framework to guide circumstances for affordable housing contribution under a Planning Agreement.

5.1. Establishment of Planning Agreements

5.1.1 Planning Agreements may arise through either a development application or a request for an LEP instrument change (herein referred to as 'an Application').

5.1.2 Council may negotiate a Planning Agreement offered by a proponent in connection with any Application relating to any land in the Council's local government area.



- 5.1.3 Where the land has been identified Residential Strategy as affordable housing contribution scheme investigation area with a set contribution, the proponent for a planning proposal; may prior making the application and as part of a letter of offer for a VPA, request that Council consider contribution rate variation for that part an application subject to the upzoning.
- 5.1.4 Before making a letter of offer for a Planning Agreement, a pre-lodgement meeting is to be held with Council staff to discuss the application and only in the case of an upzoning, any intent to make an alternative contribution rate request and if so set terms for undertaking an independent viability testing.
- 5.1.5 Any letter of offer for a Planning Agreement with Council is to be made by the proponent before lodging a planning proposal application.
- 5.1.6 Any offer for a Planning Agreement with Council is to be:
- a) in writing
 - b) be addressed to Council
 - c) be signed by or on behalf of all parties to the planning agreement other than the Council to whom the offer is made
 - d) outline in sufficient detail to allow proper consideration by the Council the matters required to be included in a planning agreement as specified in section 7.4 of the Act
 - e) address in sufficient detail to allow proper consideration by the Council any relevant matters required to be included in an offer as specified in the AHCP and this procedure
 - f) outline in sufficient detail to allow proper consideration by the Council all other key terms and conditions proposed to be contained in the planning agreement, and
 - g) A report, prepared at the cost of the proponent, containing the independent viability testing undertaken in line with the Guidelines for Development Affordable Housing Contribution Schemes (NSW Govt. Feb 2019) if being sought.
- 5.1.7 Council will endeavour to consider the offer within 40 days of receipt and advise of the proponent of the in principle determination to enable the proponent to progress with the lodgement of the planning proposal. This in principle determination will provide the basis for the agreement negotiation. Council may decide to delegate this advisory determination process in the interest of efficiency.
- 5.1.8 The acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council. In determining whether to accept an offer to enter into a Planning Agreement, the Council will take into consideration a number of matters including the nature and value of the public benefit being offered in proportion to the nature and value of the exceedance of the planning controls sought by the



proponent in the case of the application and terms for undertaking an independent viability testing set in the pre-lodgement meeting if being sought.

5.2 Planning Agreement Principles

Planning Agreements will be governed by the following principles:

- 5.2.1 Planning agreements must be governed by the fundamental principle that planning decisions may not be bought or sold
- 5.2.2 Council will not allow planning agreements to improperly fetter the exercise of statutory functions with which they are charged
- 5.2.3 Council will should not use planning agreements as a means of revenue raising, to overcome spending limitations, or for other improper purposes
- 5.2.4 Council will not be party to planning agreements in order to seek public benefits that are unrelated to particular development
- 5.2.5 Council will not, when considering applications to change environmental planning instruments or development applications, take into consideration planning agreements that are wholly unrelated to the subject-matter of the application, or attribute disproportionate weight to a planning agreement
- 5.2.6 Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering planning agreements
- 5.2.7 Council will not improperly rely on their statutory position in order to extract unreasonable public benefits from developers under planning agreements
- 5.2.8 Council will ensure that their bargaining power is not compromised or their decision-making freedom is not fettered through a planning agreement
- 5.2.9 Council should avoid, wherever possible, being party to planning agreements where they also have a stake in the development covered by the agreements. Council will assess the public benefit of the Development Contribution when deciding whether to proceed with the Planning Agreement

5.3 Form of Contribution

Planning Agreements are separate from Council's Developer Contributions Plan. Planning Agreements provide an efficient means of increasing and broadening the range of community infrastructure in conjunction with development.

A contribution for affordable housing will only be accepted in the form of a land dedication free of cost. The dedicated land has to be part of the development application land. A land contribution to Council for the purpose of affordable housing requires the land is fit for purpose.

The Planning Agreements must be in addition to s7.11 or s7.12 of *the Act* contributions.

Council will not accept any component of a public benefit under the terms of a Planning Agreement if that component is already required to be provided by virtue of a condition of



development consent with the exception where the Planning Agreement proposes any off sets to contributions under Developer Contributions Plan and in accordance with *the Act*.

The level of contribution to be made under a proposed Planning Agreement will be determined by the particulars of the application to which the Planning Agreement relates.

To ensure that development contributions provided under Planning Agreements are directed towards appropriate and legitimate planning purposes, Council will consider whether the proposed development contributions:

- 5.3.1 mitigate or compensate for the impact of the relevant development
- 5.3.2 meet Council's planning policy objectives including those set out in the Developer Contributions Plan
- 5.3.3 meet the requirements of Council's public infrastructure works program
- 5.3.4 meet the objectives of other relevant draft or adopted Council policies, strategies or plans.

5.4 Acceptability test to be applied to Planning Agreements

Council will consider as part of the acceptability test for a letter of offer for a planning agreement and negotiated agreement the following questions:

- 5.4.1 Is it directed towards proper legitimate planning purposes, that can be identified in the statutory planning controls and other adopted planning policies applying to development?
- 5.4.2 Does it provide for public benefits bear a relationship to development that is not de minimis (that is benefits that are not wholly unrelated to development)?
- 5.4.3 Does it produce outcomes that meet the general values and expectations of the public and protect the overall public interest?
- 5.4.4 Does it provide for a reasonable means of achieving the desired outcomes and securing the benefit?
- 5.4.5 Does it protect the community against planning harm?
- 5.4.6 Can the proposed Planning Agreement be taken into consideration in the assessment of the relevant LEP amendment or development application?
- 5.4.7 Will the proposed Planning Agreement provide benefits that bear a relationship to the delivery of services and infrastructures within the Shire?
- 5.4.8 Is the quantum of the Public Benefit commensurate with the value of the development contribution?
- 5.4.9 Does the proposed Planning Agreement promote Council's strategic objectives in relation to the use of affordable housing contributions?



5.4.10 Does the proposed Planning Agreement conform to this Policy?

5.4.11 It is proposed that the Planning Agreement be registered pursuant to s7.10 of *the Act*?

5.4.12 Is the proposed Planning Agreement relevant to the development application or LEP instrument change and whether it may be subsequently considered in connection with the development application or LEP instrument change; and if so, the proper planning weight to be given to the proposed Planning Agreement.

5.5 When will Council not consider entering a Planning Agreement

While Planning Agreements may be used in a wide range of circumstances, it is important to identify situations that may prohibit Council from considering entering a Planning Agreement and/or make a proposed Planning Agreement undesirable. Council will not consider entering a Planning Agreement in the following circumstances:

5.5.1 Where the suspicion may arise that an LEP amendment or development consent can be bought by the highest bidder via a Planning Agreement

5.5.2 When the Planning Agreement incorporates or suggests an obligation for Council to grant consent to the application relating to the Planning Agreement

5.5.3 Where a breach of *the Act* or any other Act may result from the provisions of a Planning Agreement

5.5.4 Where Council has a direct stake in the development

5.5.5 When a development is unacceptable on planning grounds, planning benefits offered by the proponent in a Planning Agreement will not make an unacceptable development acceptable

5.5.6 When where considering a proposed Planning Agreement, the interests of individuals or interest groups outweigh the public interest

5.5.7 When it could be considered that Council is improperly relying on its statutory position to extract unreasonable public benefits from a proponent via a Planning Agreement

5.5.8 When a proposed Planning Agreement proposes a reduction in payment of Developer Contributions and where the proposed public benefit is not works identified in the Developer Contributions Plan

5.5.9 Where the proposed public benefit is of a lesser value than developer contributions which would be otherwise payable under the Developer Contributions Plan and/or there is no nexus between the proposed public benefit and the 'heads of developer contributions' proposed to be reduced

5.5.10 When a proposed Planning Agreement will prejudice the timing or manner of the provision of any particular facility or service identified in Council's Developer Contributions Plan



5.5.11 When a proposed public benefit would be a matter which would be required pursuant to a condition imposed under s4.17 of *the Act* in any event.

5.6 Public notification of Planning Agreements

Public notification of a Planning Agreement will be undertaken in accordance with *the Act*, regulations. The Byron Shire Community Participation Plan and [Practice Note on Planning Agreements](#) provide further guidance.

5.7 Independent third parties

Independent third parties may, at the sole discretion of Council, be used wherever it is deemed appropriate by Council for various reasons including but not limited to, circumstances where it is considering whether the Planning Agreement delivers a net public benefit. The cost associated with the use of independent third parties will be borne by the proponent.

5.8 Assessing proposed provisions under a Planning Agreement

The matters that Council may consider in any negotiations for a Planning Agreement include whether:

- 5.8.1 the demands created by the development for new public infrastructure, amenities or services are addressed
- 5.8.2 the facilities and/or services to be provided meet the planning and strategic objectives of Council
- 5.8.3 mitigation of the impact of development is addressed
- 5.8.4 recurrent funding of public facilities is required
- 5.8.5 past deficiencies in infrastructure provision that would otherwise prevent a development from occurring are addressed
- 5.8.6 monitoring the planning impacts of development is required
- 5.8.7 planning benefits for the wider community accrue from the Planning Agreement and
- 5.8.8 any initial or ongoing costs are designated as Council's responsibility.

5.9 Standard contributions

Wherever possible, Council will seek to standardise development contributions sought under Planning Agreements in order to streamline negotiations and provide fairness, predictability and certainty for proponents. This does not however prevent public benefits from being negotiated on a case by case basis, particularly where planning benefits are involved.



5.10 Recurrent charges

Council may request developers, through a Planning Agreement, to make development contributions towards the recurrent costs of public facilities. Generally, the Planning Agreement will only require the developer to make contributions towards the recurrent costs of the facility until a public revenue stream is established to support the on-going costs of the facility, or for a time agreed between the parties.

5.11 Valuing public benefits under a Planning Agreement

Public benefits are negotiated for a Planning Agreement on a case by case basis; however there is value in standardised development contributions as they provide predictability and certainty. Each circumstance is however unique and standardised contributions may not suit all developments.

Where the development contribution under a Planning Agreement includes the dedication of land and the value of that land is to be taken into account, Council may seek the services of an appropriately qualified land valuer as appointed by Council and at the cost of the Developer in order to value the land being dedicated.

If the value of the benefit proposed under a Planning Agreement is of a lesser value than the contributions payable under Council's adopted Developer Contributions Plan, the applicant will be required to pay the balance of the contributions owing.

In addition, if the proposed benefit does not address all of the 'heads of developer contributions' identified in Council's adopted Developer Contributions Plan, contributions will remain payable for the other 'heads of developer contributions'.

5.12 Time when a developer's obligations arise under a Planning Agreement

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 the development that is the subject of the agreement. However, where the public benefit provided under a Planning Agreement is for a limited time, Council may require the Planning Agreement to operate from the first day on which the public benefit arises.

Where a Planning Agreement requires land to be dedicated to Council, a suitable means of enforcement should be contained in the Planning Agreement such as a pre-acquisition agreement for the purposes of the *Land Acquisition (Just Terms Compensation) Act 1991* enabling the Council to compulsorily acquire the land to be dedicated for nominal or an agreed value in the event of default by the developer.

5.13 Pooling of monetary contributions

Council will in the Planning Agreements disclose if monetary contributions paid under different planning agreements are to be pooled and progressively applied towards the provision of public benefits that relate to the various agreements. Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.



5.14 Implementation Agreements

Where appropriate, Council will require the Planning Agreement to include provision that before the development that is the subject of the Planning Agreement is commenced, the parties are to enter an Implementation Agreement. The Implementation Agreement must provide for matter such as:

- 5.14.1 the times at which and if relevant, the period during which, the developer is to make provision under the Planning Agreement
- 5.14.2 the design, technical specification and standard of any work required by the Planning Agreement to be undertaken by the developer
- 5.14.3 the manner in which a work is to be handed over to Council
- 5.14.4 if the Planning Agreement requires the developer to manage or maintain land that been dedicated to Council or works that have been handed over to Council, the manner in which this will take place, and
- 5.14.5 the manner in which a material public benefit is to be made available for its public purpose in accordance with the Planning Agreement.

5.15 Monitoring and Review of a Planning Agreement

Council will require the Planning Agreement to contain agreement contains appropriate self enforcing triggers.

5.16 Modification or Discharge of the Developer's Obligations

The provision in the Planning Agreement relating to modification or revocation of the Planning Agreement must be in accordance with *the Act* and the Regulation.

5.17 Preparation and Form of the Planning Agreement

In each case, Council and the proponent will decide who will prepare the Planning Agreement.

Council will require the Planning Agreement to be in accordance with Council's Planning Agreement Template (to be prepared after adoption of policy).

5.18 Payment of Costs incurred

Wherever possible, Council and the proponent will negotiate and agree costs at the earliest opportunity. In doing so, Council will make provision in the planning proposal costs and expenses agreement for payment by the proponent of all of Council's costs of negotiating, preparing and entering the Planning Agreement.

There is no comprehensive policy that can applied relating to cost recovery and cost sharing, due to the unique circumstances associated with each Planning Agreement. However as a general rule, Council considers that the following approach is fair and reasonable:



5.18.1 if the Planning Agreement relates to an application by a developer for an instrument change, the developer will pay the whole of Council's costs

5.18.2 if the Planning Agreement relates to a development application, then the developer will pay the whole of Council's costs.

The reasonableness of charges may be established by the use of published Council charges, industry standard charges, independent third party quotations or other means. Costs will include all staff resources expended on negotiating, preparing, entering and enforcing any agreement as well as all costs incurred by the Council, for example but not limited to legal costs, surveying costs, legal fees, consultants fees, registration fees, agents fees, production fees, advertising costs, photocopy fees, GST liability etc.

5.19 GST Considerations

A Planning Agreement potentially involves taxable supplies from Council and/or the developer. Consequently both parties may have a potential GST liability. Council and the proponent must obtain legal/financial advice in every case as to whether a potential GST liability attaches to a particular agreement.

5.20 Registration of Planning Agreements with the Registrar-General

A Planning Agreement can be registered under s7.6 of *the Act* if the relevant parties agree. If a Planning Agreement has been registered with the Registrar-General under this section, the agreement is binding on, and is enforceable against the owner of the land from time to time as if each owner for the time being had entered into the agreement.

Council and the developer will negotiate in each circumstance whether a Planning Agreement will contain a provision requiring the developer to agree to registration of the agreement pursuant to s7.6 of *the Act*. Generally, however unregistered Planning Agreements will be undesirable to Council.

6. How affordable housing contributions relate to the Developer Contributions Plan

An important tool of Council to fund vital infrastructure and facilities in response to development is the Developer Contributions Plan. It identifies the infrastructure funding priorities in Byron Shire.

Whilst Planning Agreements can offer more flexibility in the nature and timing of the contributions a developer can make, they must be seen as an addition to traditional developer contribution requirements and not as a replacement. If Council does not apply its Developer Contributions Plan to development, and instead accepts only planning agreements, Council's ability to implement its Developer Contributions Plan works programs could be severely adversely impacted and a risk would arise that the community gains the infrastructure the developer wishes to give, and not what it needs or what Council is already committed to providing.



Byron Shire Council may agree to a provision allowing benefits under a Planning Agreement to be taken into consideration in determining development contributions under s7.11 and s7.12 of *the Act*.

When considering the benefits offered under a Planning Agreement and whether they can be used to offset development contributions payable pursuant to s7.11 of *the Act*, the public benefits must only be 'works-in kind' namely infrastructure or facilities listed in the relevant Works Programs of Council's Developer Contributions Plan.

7. Administration and management of the affordable housing contributions

7.1 Notations on planning certificates under Section 10.7 (5) of *the Act*

7.1.1 Council will make a notation under Section 10.7(5) of *the Act* about a Planning Agreement, relating to the land the subject of the agreement or any other land the Planning Agreement must contain an acknowledgment by the developer of the potential for such a notation.

7.1.2 Council will make a notation under Section 10.7(5) of *the Act* about the land being affected by an affordable housing contribution scheme relating to the land the subject of the clause. The notation to be made in certificate Section 9 Contributions plans.

7.2 Program

7.2.1 Council will establish an affordable housing delivery program articulating terms guiding:

- a process for collecting and paying contributions including evidence of title that contributed land or units or in lieu funds have been transferred to the relevant Council entity and responsibilities of a private certifier
- contribution administration
- administrator selection
- accountability.

7.2.2 Council intends to retain the ownership of the assets.

7.2.3 Council intends to select one or more community housing providers to deliver and manage housing generated under affordable housing contributions. The organisation should be:

- incorporated under the Corporation Law and independent from Byron Shire Council.
- have an expertise-based board, with social housing, finance, asset management and housing production skills.



8. Review

The procedures contained in this document will be regularly reviewed and updated as necessary if legislation requires it; or when Council’s related policies, functions, structure or activities change; or when technological advances or new systems change the way that Council manages the dedication of land to Council or application of contributions.

Any updates may cover additional matters to those covered in this procedure or provide more detailed information or guidance on specific matters covered in this procedure.

9. Terminology

In this Procedure:

Procedure term	Definition
Affordable housing	the same as in <i>State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)</i>
affordable housing condition	a condition that may be imposed on development consent, under section 7.32 of <i>the Act</i> , requiring the dedication of land or a monetary contribution for the purpose of providing affordable housing
affordable housing contribution scheme (AHCS)	a scheme referred to in section 7.32 (3) (b) of <i>the Act</i> set out in or adopted in a local environmental plan.
affordable housing contribution scheme investigation area	in the case of the ACHP, an area supported for investigation the implementation of an affordable housing contribution scheme.
affordable housing principles	the principles as identified in <i>Schedule 2 of State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)</i>
Council	Byron Shire Council
development application	has the same meaning as in <i>the Act</i>



development contribution	the provision made by a developer pursuant to s94 of <i>the Act</i> or under a Planning Agreement, being a monetary contribution, the dedication of land free of charge or the provision of a material public benefit to be used for or applied towards a public purpose
LEP	the Byron Shire Local Environmental Plans
Planning Agreement	a voluntary agreement between one or more planning authorities and a developer: (a) who seeks to change an environmental planning instrument (which may be for rezoning or other purpose); or (b) who has made, or proposes to make a development application
planning obligation	an obligation imposed by a Planning Agreement on a developer requiring the developer to make a development contribution
proponent	the landowner and/or developer making a development application or a request for an LEP instrument change.
public benefit	the benefit enjoyed by the public as a consequence of a development contribution
public facilities	public infrastructure, facilities, amenities and services
the Act	the Environmental Planning and Assessment Act 1979
upzoning	a change of zone to enable residential development or a change of planning controls (such as floor space ratio) which enables greater residential density on a site