



DEVELOPMENT CONTRIBUTIONS LAND DEDICATION AND WORKS IN KIND POLICY

Adopted: 29 March 2017

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DEVELOPMENT CONTRIBUTIONS LAND DEDICATION AND WORKS IN KIND POLICY

1. PURPOSE

- 1.1 New urban development creates the need for additional public amenities and public services. Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) empowers Council to require new urban development to contribute towards the provision of these public services and amenities. Council's various contributions plans provide information on:
- a) The extent of anticipated development;
 - b) Public services and amenities needed to support new development;
 - c) The contributions that new development must make to fund the provision of these services and amenities.
- 1.2 The purpose of this policy is to establish a framework for the provision and acceptance of Works in Kind (WIK) in satisfaction of requirements to pay development contributions in accordance with the provisions of the EP&A Act and Council's various contributions plans.

2. DEFINITIONS

Contributions plan is the contributions plan prepared and approved by Council and made in accordance with Division 6 of Part 4 of the EP&A Act.

Developer is a person or entity who proposes to carry out development.

Development has the same meaning as in the EP&A Act, being:

- a) the use of land; and
- b) the subdivision of land; and
- c) the erection of a building; and
- d) the carrying out of a work; and
- e) the demolition of a building or work; and
- f) any other act, matter or thing referred to in section 26 that is controlled by an environmental planning instrument,

but it does not include any development of a class or description prescribed by the regulations for the purposes of this definition.

Development application has the same meaning as in the EP&A Act, being an application for consent under Part 4 to carry out development but does not include an application for a complying development certificate.

Development consent has the same meaning as in the EP&A Act, being consent under Part 4 to carry out development and includes, unless expressly excluded, a complying development certificate.

Land dedication means dedicating a portion or portions of land to Council in conjunction with a plan of subdivision, other than under a road.

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EP&A Act means the *Environmental Planning and Assessment Act 1979*.

Works in Kind (WIK) refers to the construction or provision of the whole or part of public amenities, public services and/ or land that are identified in a works schedule in the contributions plan that applies to the site.

3. LEGISLATIVE REQUIREMENTS

3.1 Provisions of the following legislation and instruments will be relevant when considering WIK:

- a) *Environmental Planning and Assessment Act 1979*;
- b) *Environmental Planning and Assessment Regulation 2000*;
- c) *Local Government Act 1993*;
- d) Liverpool Local Environmental Plan 2008 or a State Environmental Planning Policy that applies to a site;
- e) Any Development Control Plan that applies to a site;
- f) Any contributions plan that applies to a site.

3.2 Section 94 of the EP&A Act provides that, where a consent authority is satisfied that proposed development will require the provision of or increase the demand for public amenities and public services, the consent authority may grant development consent subject to a conditions requiring a reasonable dedication of land or payment of monetary contribution towards the extension or augmentation of those amenities or services.

3.3 At the time this policy was originally adopted by Council, section 94(5) of the EP&A Act specifically provided that a consent authority may accept the provision of a material public benefit in satisfaction of a condition requiring the dedication of land or a monetary contribution towards the provision of public services and amenities.

3.4 Section 94(6) of the EP&A Act also provided that when proposing to impose a condition requiring payment of monetary contributions, a consent authority must take into account any material public benefit that the applicant has elsewhere provided free of cost.

3.5 This policy is intended to fit within the legislative framework established under the EP&A Act for consideration of material public benefits. This policy addresses material public benefits that are offered:

- a) In satisfaction of existing conditions requiring payment of development contributions (under section 94(5) of the EP&A Act); or
- b) In conjunction with proposed development (so that the offset can be considered under section 94(5) of the EP&A Act); or
- c) In return for a 'credit' against future contributions that would otherwise be payable (under section 94(6) of the EP&A Act).

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- 3.6** This policy is to be read in conjunction with the current version of the contributions plan that applies to a site.

4. POLICY STATEMENT

- 4.1** Council will consider an application by a developer to carry out works and/ or dedicate land identified in a contributions plan.

- 4.2** This policy applies to works and/ or land identified in a contributions plan that a developer offers or has offered in exchange for a 'credit' or offset against development contributions (WIK credit).

- 4.3** Prior to making any application offering land dedication and/ or WIK, the developer should consult Council about the proposal. The developer should expect Council to seek details of the proposed WIK offer and any associated development during the consultation process.

- 4.4** Any offer for the undertaking of land dedication and/ or WIK with the intent of receiving credit from Council must be made in writing. The procedure for application and consideration of the proposed WIK arrangement will be carried out in accordance with this policy.

- 4.5** To be eligible for a land dedication credit and/ or a WIK credit, the items must be:

- a) Identified in a contributions plan;
- b) Procured through an open and transparent process that will deliver value for money for Council; and
- c) In compliance with Council specifications and relevant Australian Standards.

- 4.6** Variations to the items listed in the contributions plan will only be considered at Council's sole discretion and items that are not listed in the contributions plans will not qualify for a WIK credit.

- 4.7** The acceptance of an offer for land dedication and/ or WIK will be at the sole discretion of Council.

5. PROCEDURE FOR WIK

5.1 Identification of proposed WIK in development application

Items that qualify for WIK can be identified by referring to the contributions plan that applies to the site.

If a developer seeks to have WIK credit applied in conjunction with proposed development, the scope of WIK must be described in the relevant development application or construction certificate application.

5.2 Application to Council

A written application to provide WIK must be submitted to Council by the developer. The application must be supported with detailed documentation, including the following information:

- a) A detailed description of the works proposed to be undertaken supported by concept design drawings and a concept design report;
- b) Three hard copies and one electronic copy of the concept design must be provided;
- c) An explanation as to whether the proposed works are intended to be completed in full or to be partially completed;
- d) The estimated value of the works produced by a qualified practicing Quantity Surveyor, Civil Engineer or Surveyor with associate or higher membership of an accredited professional institution in Australia. The valuation should identify any variance between the cost estimate and the cost identified in the relevant contributions plan (noting the cost identified in the contributions plan is generally indexed in accordance with changes in the Consumer Price Index);
- e) A schedule identifying the components of works that are in accordance with the contributions plan that applies to the site and those that are not; and
- f) A program of works showing the timeframe for commencement and completion of the proposed works.

5.3 Assessment and determination of the application to undertake WIK

Council will assess the proposal with due regard to the provisions in the contributions plan that applies to the site and determine acceptability of the proposal.

In assessing an application to reduce development contributions for WIK, Council will consider the current legislation, ministerial directions and the practice notes issued by the NSW Government.

Council will also consider the following matters:

- a) The monetary value of the proposed WIK and the amount of 'credit' or offset sought by the developer;
- b) The design concept of the proposed WIK;
- c) The overall benefit of the proposed WIK to the current and future development in the area;
- d) The timing of completion of the WIK;
- e) The feasibility of constructing the proposed WIK within amounts budgeted in the contributions plan that applies to the site;
- f) Financial implications for Council in accepting the dedication of the WIK involving any effects on the implementation of Council's adopted works programs; and

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- g) Financial implications for Council in accepting the dedication of the WIK in relation to ongoing management and maintenance of the WIK. Particular regard will be given to works such as open space embellishment and drainage facilities. In this regard it is advisable to discuss the scope of embellishments with Council prior to submission of the application for WIK.

Council may consult other developer stakeholders who would be required to contribute to the works, prior to accepting the WIK proposal.

The developer will be notified in writing of the outcome of the assessment.

5.4 Acceptance by Council of the offer to undertake WIK

Should Council determine to accept an offer for WIK, details of the agreed WIK, including the rights and responsibilities of the developer, will be set out in a schedule to a covering letter in the form of an enforceable agreement (a WIK agreement).

Two identical copies of the covering letter, including the schedule, will be provided to the developer. The developer must sign and return one copy to Council and retain the other.

No additions, alterations or variations to the scope of items listed in the WIK agreement will be permitted without prior written approval from Council.

The WIK agreement will include terms relating to the following:

- a) Design requirements and relevant standards for the works;
- b) Security bonds and defects liability periods;
- c) Insurance requirements;
- d) Indemnities provided by the developer to Council;
- e) Inspections required; and
- f) Work Health and Safety requirements.

The terms of the WIK agreement will be generally consistent with the provisions of this policy, unless Council is satisfied that the circumstances justify a departure from the policy.

5.5 Lodgement of security bond

Upon the issue of the certificate of practical completion, the developer will be required to lodge a bond of 5%, calculated on the agreed value of the WIK. The cost of procuring the bond will be borne by the developer.

The 5% security bond will be retained for a period of 12 months from the date of issue of the certificate of practical completion for general construction works and 24 months for vegetation related works, to cover any defective works.

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Council will be entitled to call on the bond in accordance with the terms of the WIK agreement.

5.6 Insurances

The developer will be required to produce evidence of current policies of insurance relevant to the construction of the WIK. The values of the policies will be determined having regard to the nature and extent of the WIK and the risks inherent in carrying out the WIK.

The policies of insurance required include:

- a) Public liability with \$10,000,000 minimum cover (this may be higher depending on the nature of the proposed work);
- b) Professional indemnity;
- c) Workers compensation;
- d) Insurance of the works; and
- e) Motor vehicle insurance.

Any insurance to be effected by the developer is to be in the joint names of the developer and Council and include a cross liability clause.

5.7 Approvals

The developer must obtain, and comply with, all necessary approvals to carry out the WIK, including development approvals, approvals under environmental and water legislation and approvals from entities such as the Roads and Maritime Services, Energy Australia, Telstra and the like.

5.8 Construction

Construction can commence on completion of Steps 5.1 to 5.7 of this policy, and any other preliminary requirements under the WIK agreement.

Council will carry out inspections of the works as outlined in the WIK agreement.

On completion of the works, a final inspection will be carried out and Council will assess the acceptability of the works. The developer will be notified of the outcome of the inspection in writing.

If incomplete works or defective works are identified, the developer will be required to complete the works to Council's satisfaction in accordance with the specifications, the design documents and the WIK agreement.

If the works can be accepted by Council, it will issue a Certificate of Practical Completion to the developer.

5.9 Release of security bond

At the end of these defects liability periods, the developer may request the release of the 5 percent security bond. Council will carry out a further assessment of the entire works covered by the WIK agreement.

If Council is satisfied that the works are free from defects, Council will release the security bond to the developer (subject to any terms of the WIK agreement allowing Council to call on the bond to address defects).

5.10 Accountability requirements

Council is responsible for the collection and disbursement of the funds collected under the EP&A Act. In order to ensure probity and transparency, supporting documentation must be kept by the developer for a minimum period of 12 months after the handover of the works.

The developer should be aware that any WIK agreement may be reported and accounted for by Council in accordance with annual requirements for reporting of contributions.

5.11 Dedication of WIK

Within eight weeks of the issue of a Certificate of Practical Completion, the applicant must:

- a) Dedicate the works and associated land to Council; and
- b) Supply two hard copies and one electronic copy of the works as executed drawings.

6. PROCEDURE FOR LAND DEDICATION CREDIT

6.1 Identification of proposed dedication of land

Land parcels that qualify for land dedication can be identified by referring to the contributions plan that applies to the site. If a developer seeks to have Land Dedication credit applied in conjunction with proposed development, the scope of Land Dedication must be described in the relevant development application or construction certificate application.

Where it is proposed to dedicate land to Council that is not identified in a contributions plan that applies to the site, Council will consider whether it should accept the land. No credit will be given for the land dedication against any contributions payable for development of the site.

6.2 Application to Council

A written application for land dedication must be submitted to Council by the developer. The application must be supported with detailed documentation, including the following information:

- a) A detailed description of the land proposed to be dedicated;
- b) A plan prepared by a registered surveyor to a standard satisfactory for submission to NSW Land and Property Information;
- c) Identification of any works to be carried out on the land to be dedicated to Council.
- d) A schedule identifying the components of works that are in accordance with the contributions plan that applies to the site;
- e) A land contamination report, prepared by a suitably qualified person; and
- f) A valuation from a registered land valuer providing evidence of the value of land that is being sought as a land dedication.

6.3 Assessment and determination of the application to dedicate land

Council will assess the proposal with due regard to the provisions in the contributions plan that applies to the site and determine acceptability of the proposal. In assessing an application to reduce developer contributions for land dedication, Council will consider the current legislation, ministerial directions and the practice notes issued by the NSW Government.

Council will also consider the following matters:

- a) The monetary value of the proposed land dedication and the amount of “credit” or offset sought by the developer;
- b) The design concept of any proposed works in conjunction the proposed land dedication;
- c) The overall benefit of the proposed land dedication to the current and future development in the area;
- d) The timing of completion of the proposed land dedication as a WIK;
- e) If works are proposed on the land to be dedicated as a WIK, the feasibility of constructing those works within amounts budgeted in the contributions plan that applies to the site; and
- f) Financial implications for Council in accepting the land dedication, including any effects on the implementation of Council’s adopted works programs and requirements for ongoing management and maintenance of the land dedication.

Council may consult other developer stakeholders who would be required to contribute to the works, prior to accepting the land dedication as a WIK proposal.

The final decision on the acquisition of land will be made by Council.

The developer will be notified in writing of the outcome of the assessment.

6.4 Acceptance by Council of the offer to dedicate land

A decision to acquire will be by Council resolution. Should Council determine to accept an offer for dedication of land, details of the agreed dedication, including the rights and responsibilities of the developer, will be set out in a schedule to a covering letter in the form of an enforceable agreement.

Two identical copies of the covering letter, including the schedule, will be provided to the developer. The developer must sign and return one copy to Council and retain the other.

No additions, alterations or variations to the scope of items listed in the WIK agreement will be permitted without prior written approval from Council.

The land dedication agreement will include terms relating to the value of the land. For details on WIK agreement for construction, refer to clause 5. The terms of the WIK agreement will be generally consistent with the provisions of this policy, unless Council is satisfied that the circumstances justify a departure from the policy.

7. SETTLEMENT OF A CREDIT FOR LAND DEDICATION AND/ OR A WIK

7.1 Credit against existing contributions requirements

Where a developer seeks to offset land dedication credit and/ or a WIK credit against an existing requirement to pay contributions, the land dedication and/ or a WIK must be dedicated to Council prior to the credit being settled.

The land dedication credit and/ or a WIK credit will be applied as an agreed reduction of contributions payable under the relevant development consent in accordance with section 94(5) of the EPA Act.

Land dedication and/ or WIK credit cannot be applied once development contributions have been paid. The condition requiring the payment of the contributions does not need to be modified.

7.2 Land Dedication and/ or WIK constructed in conjunction with development

If Council accepts an offer from a developer to dedicate land and/ or construct WIK in conjunction with proposed development, Council will apply the credit in the following manner:

- a) A condition will be imposed on the relevant development consent requiring the full amount of contributions calculated under the contributions plan that applies to the site; and

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- b) When the consent is granted, Council will confirm, either by letter or in the WIK agreement, that it will accept the land dedication (subject to Council resolution) and/ or provision of the WIK in satisfaction of the contributions (or part of those contributions) payable under that condition in accordance with section 94(5) of the EPA Act.

The developer will then be required only to pay the reduced amount of contributions as agreed. The condition requiring the payment of the contributions does not need to be modified.

7.3 Credit against future contributions requirements

If the land dedication and/ or WIK are not offered in conjunction with proposed development, Council will only consider it when determining future development applications in accordance with any land dedication and/ or WIK agreement once it has already been dedicated to Council.

Council may, in accordance with section 94(6) of the EP&A Act, impose a condition of development consent requiring less contributions than would otherwise be payable under the contributions plan that applies to the site, if it considers that a credit is available for past land dedication and/ or WIK provided by the developer.

8. DISCRETION TO GRANT A CONSENT

- 8.1** The provision of land dedication and/ or WIK in accordance with this policy will not be considered by Council when determining a relevant development application, except to the extent authorised by sections 94(5) and 94(6) of the EP&A Act.
- 8.2** Council's statutory discretion or duty in determining development applications will not be limited or fettered by the provision of any land dedication and/ or WIK agreement.
- 8.3** The provision of land dedication and/ or WIK or entering into any agreement with a developer will not impose any obligation on Council to grant development consent.

9. OTHER REQUIREMENTS

- 9.1** Nothing in this policy negates the application or requirements of any other relevant legislation. Council's policies are designed to ensure compliance with the *Local Government Act 1993*. Council officers have varying levels of delegated authority to approve works and expenditure. For the purposes of this policy, Council's Chief Executive Officer can approve expenditure which has not been included in the Budget.

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- 9.2** Section 55 of the *Local Government Act 1993* requires Council to invite public tenders for works and services in excess of \$150,000. WIK requiring a funding contribution from Council of more than these limits must be tendered in accordance with Council's tendering policy. In particular the tendering requirements under s55 of the *Local Government Act 1993* will continue to apply to these works.
- 9.3** WIKs which are either fully funded by the developer, funded by development contributions held by the developer or require less than \$150,000 funding from Council do not have to be tendered in accordance with the *Local Government Act 1993*. However, competitive prices must be obtained to Council's satisfaction.

10. NOTES

- 10.1** Council does not accept any financial risk associated with the construction of the works and will only cover those attributable costs agreed to in the works in kind agreement entered into by the developer. Any costs beyond this will be borne by the developer.
- 10.2** Council does not accept any liability for costs associated with altering the design or construction of works or land dedications if the applicant has received development consent for the land/works prior to execution of a works in kind agreement.
- 10.3** Developers should not expect reimbursement of surplus value in full. The possibility and level of reimbursement is limited to the funds collected from contributions received from other developers for those works pursuant to the relevant Contributions Plan (at the time of plan repeal) and the possibility funds shall be distributed equitably to multiple developers as reimbursement of their respective surplus values. Council also retains the right to repay Council's outstanding financial liabilities for local infrastructure projects forward funded by Council's Capital Works Program and invest funds collected from other developers to other local infrastructure projects.

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AUTHORISED BY

Council Resolution

EFFECTIVE FROM

29 March 2017

DIRECTORATE RESPONSIBLE

Planning and Growth (Development Engineering)

REVIEW DATE

Two years after the date of the adoption of this policy

VERSIONS

Version	Amended by	Changes made	Date	TRIM Number
1	Adopted by Council	Not applicable	20 August 2012	212110.2012
2	Adopted by Council	Mainly to clause 7 and new clause 8	27 July 2016	180376.2016
3	Adopted by Council	Includes reference to land acquisition	29 March 2017	063737.2017

THIS POLICY WAS DEVELOPED AFTER CONSULTATION WITH

Corporate Services (Governance, Legal and Procurement)

Planning and Growth (Strategic Planning)