

Developer Works in Kind Policy

1 Purpose

This policy has been developed to provide a standard procedure and criteria for processing applications where a developer makes an application for developer works in kind (WIK) or a material public benefit in lieu of partial or full payment of Section 94 developer contributions or Section 64 Developer Contributions that have been applied to a development consent.

This policy does not apply to Material Public Benefit Works (MPB), defined as some (material) component, other than land dedication or monetary contribution in full or part settlement of contributions levied under a condition of a development consent, but does not include works included in a Contributions Plan Works schedule.

Any proposal by a proponent to undertake MPB works a report to Council for determination.

2 Policy

2.1 Written Application

Any application for the provision of a WIK must be made in writing prior to commencement of any works associated with the development consent and should contain the following information (where relevant):

- The works proposed to be undertaken and whether the works are contained within the works schedule of the relevant contributions plan.
- The estimated value of the works – identifying variations, if any, between the cost identified in the Plan and the estimated cost of works;
- The differentiation of components of the works that are in accordance with the plan and those that are not;
- The time frame within which the works are proposed to commence and be completed.
- Written consent to carry out the work from all owners of land affected by the proposal

Where the value of the WIK is less than the value of the required contribution, the applicant will be required to settle the balance of the contribution by way of a monetary contribution and/or land dedication.

2.2 Council Assessment

2.2.1 The acceptance of an offer for Developer Works in Kind is at the sole discretion of Council

Developer works in kind agreements will normally only be negotiated on those works detailed in the relevant contributions plan.

In considering an application for a WIK Council must be satisfied that:

- (a) payment of the contributions in accordance with the provisions of the plan is unreasonable or unnecessary in the circumstances of the case, and
- (b) the in kind contribution will not prejudice the timing or manner of provision of the public facility for which a contribution was required, and
- (c) the value of the works to be undertaken are at least equal to the value of the contribution assessed in accordance with the relevant contributions plan, and

(d) the proposed works are of a suitable standard for Council to eventually accept

Council may review the valuation of works or land to be dedicated, and may seek the services of an independent person to verify their value. In such cases, all costs and expenses borne by the Council in determining the value of the works or land shall be paid by the applicant.

No WIK contract will be negotiated retrospectively.

2.2.2 Completion of Agreement

If a WIK agreement has been reached, a written agreement is required between the parties covering:

- The proposed works
- The cost of such works
- The applicants rights and responsibilities
- Council’s rights and responsibilities
- Clear agreement as to any variation to the amount of contributions payable in accordance with the relevant development consent as a result of the WIK agreement.

Council may, having regard to the scale or type of WIK, require the preparation of a legal contract between the proponent and Council. Costs associated with preparation of such a legal contract shall be met by the proponent.

Where an application is not approved by council, the monetary contribution, as per the consent remains applicable.

3 Definitions

Developer Works In Kind (WIK): Is the undertaking of work, or the provision of a facility, or the dedication of lands specifically included in an adopted contributions plan in lieu of the payment of a contribution required in accordance with a condition of consent.

Contributions Plan: Means the applicable Developer Contributions Plan adopted by Council in accordance with the provisions of the Environmental Planning and Assessment Act 1979, or a Development Servicing Plan adopted by Council under Section 64 of the Local Government Act

Material Public Benefit: Is the undertaking of work or the provision of a facility or service that is not included in an adopted contributions plan

Applicant: Is the person or entity that has made a development application or a person legally entitled to act on the development consent.

Contract: Is a formal agreement that must be entered into with council following Council approval of an application under this policy.

Contribution Offset: Is where a developer covers part or all of the developer contributions in a manner other than the payment of a contribution or the dedication of land such as through the provision of a Material Public Benefit.

Consent: Means the development consent that has initiated the application.

4 Key Responsibilities

Position	Directorate	Responsibility
Mayor	Council	To lead councillors in their understanding of, and compliance with, this policy and related procedures

Position	Directorate	Responsibility
General Manager	Executive	To lead staff (either directly or through delegated authority) in their understanding of, and compliance with, this policy and related procedures To approve resources to develop, implement and review this policy and related procedures
Directors	All Directorates	To communicate, implement and comply with this policy and related procedures
Executive Leadership Team	All Directorates	Determine requests submitted for applications within approved delegated authority
Council Officers	Council	Receive application for WIK and refer to Developer Contributions Co-ordinator for co-ordination of a decision
Developer Contributions Officer	Business Services	Responsible for co-ordinating the determination of the application
Council officers, Relevant asset owner e.g. Group Leader Strategic Asset Management	All Directorates	Determine the appropriateness and assess the relevant costs of the proposed WIK and provide recommendations to the Developer Contributions Co-ordinator.
Group Leader Financial Services and logistics	Business Services	Determine requests submitted for applications within approved delegated authority

5 References (laws, standards and other Council documents)

- Section 94 of the Environmental Planning and Assessment Act 1979
- Section 64 of the Local Government Act 1993
- Development Contributions Practice Notes – July 2005 issued by the then Dept of Infrastructure, Planning and Natural Resources

6 Details of Approval and revision

- **Approval date: 22/06/2017**
- **Responsible Section: Financial Planning**
- **Superseded policies/procedures:**
- **Next review date: 22/06/2022**

Table of amendments

Amendment	Authoriser	Approval ref	Date