



Hawkesbury City Council
Policy

Works in Kind
Policy

Adopted by Council at the
Ordinary Meeting Held on
27 October 2020

Hawkesbury City Council

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1 TITLE

Works in Kind Policy

2 PURPOSE

- 2.1 The purpose of this policy is to establish a framework for Works in Kind Agreements in satisfaction of requirements to pay development contributions in accordance with the provisions of the EP&A Act and Council's Contribution Plans that includes:
- a) Information regarding making an application and entering into a Works in Kind agreement;
 - b) Details about how Council will assess and determine whether it will enter into a Works in Kind Agreement; and
 - c) Ensuring that a fair, transparent, efficient and accountable framework governs the use of Works in Kind Agreements to facilitate the provision of public facilities, services and amenity outcomes that align with, or are consistent with Council's corporate and strategic planning context, including Council's Development Contribution Plans.
- 2.2 This policy is intended to fit within the legislative framework established under the EP&A Act for the consideration of material public benefits associated with development. This policy addresses material public benefits that are offered:
- a) in satisfaction of existing conditions requiring payment of Development Contributions (under Section 7.11(5) of the EP&A Act);
 - b) in conjunction with proposed development (so that the offset can be considered under Section 7.11(5) of the EP&A Act); or
 - c) in return for a 'credit' against future contributions that would otherwise be payable (under Section 7.11(6) of the EP&A Act).

3 SCOPE

- 3.1 This policy applies to the whole of the Hawkesbury Local Government area in circumstances where consent is granted subject to a condition requiring reasonable dedication of land or the payment of reasonable monetary contributions.
- 3.2 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).
- 3.3 This policy is to be read in conjunction with the current version of the Contributions Plan that applies to the site of the development.
- 3.4 Nothing in this Policy negates the application or requirements of any other relevant legislation.

4 BACKGROUND

- 4.1 New development creates the need for additional public amenities and public services. Section 7.11 of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides that where a consent authority is satisfied that a proposed development will require the provision of, or increase the demand for, public amenities and public services, it may grant Development Consent subject to a condition requiring a reasonable dedication of land or the payment of reasonable monetary contributions towards the extension or augmentation of those amenities or services.



- 4.2 Section 7.11(5) of the EP&A Act specifically provides that a consent authority may accept the provision of a material public benefit in satisfaction of a condition requiring the dedication of land or payment of a monetary contribution towards the provision of public services and amenities.
- 4.3 A developer may seek to construct or provide public infrastructure or amenities in whole or part in lieu of making a monetary contribution – this is known as Works in Kind (WIK). WIK Agreements can provide opportunities for developers to deliver infrastructure for the community earlier than Council would be able to achieve, as they are already constructing works on site.
- 4.4 Council has sole discretion to decide whether it will accept Works in Kind. However, it is intended that Council and all persons dealing with Council in relation to WIK will follow this Policy to the fullest extent possible.

5 POLICY DETAILS

5.1 GENERAL

- 5.1.1 Council will consider an application by a developer to carry out works and/or dedicate land identified in a Contributions Plan.
- 5.1.2 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).
- 5.1.3 Prior to making any offer to undertake WIK, the developer should consult Council about the proposal. The developer should expect Council to seek details of the proposed WIK and any associated development as part of this process.
- 5.1.4 Items that qualify for WIK can be identified by referring to the Contributions Plan that applies to the site of the relevant development. Land parcels that qualify for land dedication can be identified by referring to the Contributions Plan that applies to the site of the relevant development.
- 5.1.5 Any offer to undertake WIK with the intent of receiving a WIK Credit 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 and related documents.
- 5.1.6 To be eligible for a WIK Credit, the WIK being offered must be:
- identified in a Contributions Plan;
 - procured through an open and transparent process that will deliver value for money for Council; and
 - in compliance with Council's specifications and relevant Australian Standards.
- 5.1.7 Variations to the items listed in the Contributions Plan will be considered at Council's sole discretion and items that are not listed in the Contributions Plans will not qualify for a WIK Credit and will not be considered under this Policy.
- 5.1.8 The acceptance of an offer for WIK will be at the sole discretion of Council or its delegate. 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.



5.1.9 If a developer wishes to provide works or dedicate land not identified in the relevant Contributions Plan, then an offer to enter into a voluntary planning agreement should be submitted in accordance with Council's current Planning Agreement Policy.

5.2 ASSESSMENT AND DETERMINATION OF THE OFFER TO UNDERTAKE WIK AND/OR LAND DEDICATION

5.2.1 Council will assess an offer to undertake WIK and/or a proposal to dedicate land with due regard to the provisions in the Contributions Plan that applies to the site of the relevant development and determine the acceptability or otherwise of the offer. Council's Developer Contributions Committee will lead the assessment of any WIK offer.

In addition, the estimated value of the Works in Kind, produced by a qualified and practicing Quantity Surveyor, Civil Engineer or Surveyor with associate or higher membership of an accredited professional institution in Australia and with demonstrated relevant experience, is to be provided to Council. 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).

5.2.2 In assessing an offer to undertake WIK, Council will consider the current legislation, ministerial directions, and the requirements of any current guidelines, circulars and the practice notes issued by the Department of Planning, Industry and Environment.

5.2.3 Council will also consider the following matters:

- a) The monetary value of the proposed WIK/land dedication and the amount of WIK Credit sought by the developer.
- b) The design concept of the proposed WIK and/or any proposed works in conjunction with the proposed land dedication.
- c) The overall benefit of the proposed WIK/land dedication to the current and future development in the area.
- d) The timing of completion of the WIK/land dedication.
- e) The feasibility of constructing the proposed WIK within amounts budgeted in the Contributions Plan that applies to the site of the relevant development.
- f) Council's capacity to deliver the works and whether this would provide better value for money.
- g) Financial implications for Council in accepting the WIK/land dedication involving any effects on the implementation of Council's adopted works programs.
- h) 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, and it is advisable to discuss the scope of embellishments with Council prior to submission of the application for WIK.

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

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



5.3 SETTLEMENT OF A WORKS IN KIND CREDIT

5.3.1 Credit against existing contributions requirements

Where a developer seeks to offset a Works in Kind Credit against an existing requirement to pay Development Contributions, the WIK must be provided or dedicated to Council prior to the WIK Credit being granted.

The WIK Credit will be applied as an agreed reduction of contributions payable under the relevant Development Consent in accordance with Section 7.11(5) of the EP&A Act and as specified in the relevant WIK Agreement. A WIK Credit cannot be applied once Development Contributions have been paid. The condition requiring the payment of the Development Contributions does not need to be modified to allow a WIK Credit to be utilised.

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

If Council accepts an offer from a developer to provide WIK in conjunction with proposed development, Council will apply the WIK 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 of the relevant development.
- b) When the Development Consent is granted, Council will confirm 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 Development Contributions (or part of those Development Contributions) payable under that condition in accordance with Section 7.11(5) of the EP&A Act.

The developer will then be required to only pay the reduced amount of Development Contributions as agreed in the WIK. The condition requiring the payment of the Development Contributions does not need to be modified to allow for the application of the WIK Credit.

5.3.3 Credit against future Development Contribution requirements

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

In accordance with Section 7.11(6) of the EP&A Act, Council may impose a condition of Development Consent requiring less Development Contributions than would otherwise be payable under the Contributions Plan that applies to the relevant development, if it considers that a credit is available for past WIK provided by the developer.

5.4 DISCRETION TO GRANT CONSENT

5.4.1 The provision of 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 7.11(5) and 7.11(6) of the EP&A Act.

5.4.2 Council's statutory discretion or duty in determining Development Applications will not be limited or fettered by the provision of any WIK Agreement or any offer to undertake WIK.

5.4.3 The provision of WIK or entering into any WIK Agreement with a developer will not impose any obligation on Council to grant Development Consent.



6 ROLES AND RESPONSIBILITY

Authorised Officer	Roles & Responsibilities
Employee	Administer requirements of Policy and associated Procedures to ensure compliance. Ensure all documents are registered in ECM.
Manager/Supervisors	Administer requirements of Policy and related Procedures to ensure compliance. Manage internal and external consultation. Prepare Council reports if required. Manager authorisations, acceptance of WIK/land dedication offers, contracts and handover of WIK/Land Dedication. Manage securities. Update Asset registers. Ensure all documents are registered in ECM.
Development Contributions Committee	Ensure Executive Team is kept informed as required.

7 DEFINITIONS

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

Contributions Plan means a contributions plan made in accordance with Section 7.11 of the Act.

Council means Hawkesbury City Council.

Defects Liability Period means the period agreed to in relation to the works where Council may give the developer a rectification notice stating the works to be rectified at the developer's cost. The period will generally be:

- a) twelve (12) months from the date of issue of the certificate of practical completion for general construction works; and
- b) twenty-four (24) months for vegetation related works, to cover any defective works.

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

Development has the same meaning as in the Act.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contributions means monetary contributions required to be paid in accordance with a condition imposed under Section 7.11 of the Act.

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

Material public benefit means a benefit that is not a monetary contribution or the dedication of land but is for a public purpose. A material public benefit does not need to be a physical work.



Works in Kind (WIK) refers to the construction or provision of the whole or part of public amenities and/or public services, and the dedication of land identified in a works schedule in a Contributions Plan that applies to the site of the development, in part or full satisfaction of a Section 7.11 condition imposed under the Act.

8 RELATED DOCUMENTS

Legislation

Provisions of the following legislation and instruments are relevant when considering WIKs:

- Environmental Planning and Assessment Act 1979
- Environmental Planning and Assessment Regulation 2000
- Local Government Act 1993
- The current Hawkesbury Local Environmental Plan or State Environmental Planning Policy that applies to the site of the development.
- Any Development Control Plan that applies to the site of the development.
- Any Contributions Plan that applies to the site of the development.

Related policies

Council's Voluntary Planning Agreement Policy

Procedures

Works in Kind Procedures