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ACKNOWLEDGEMENT

Council acknowledges that within its local government area boundaries are the traditional lands of the Wonnarua people, the Awabakal people and the Darkinjung people. We acknowledge these Aboriginal peoples as the traditional custodians of the land on which our offices and operations are located, and pay our respects to Elders past and present. We also acknowledge all other Aboriginal and Torres Strait Islander people who now live within the Cessnock Local Government Area.

COUNCIL VALUES

Integrity, Respect, Teamwork, Accountability, and Excellence.

DISCLAIMER

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This guide compliments Council's adopted Works in Kind (WIK) Agreement Policy ('the Policy') and sets out the framework for the negotiation and management of WIK Agreements. All developers proposing to enter into negotiations for a WIK Agreement should read both documents, together with any reference documents, prior to initiating negotiations.

1 OBJECTIVES

- 1.1 The purpose of this document is to provide clarity for developers regarding the procedures and practices in negotiating, executing and implementing WIK Agreements with Cessnock City Council (Council).

2 SCOPE

- 2.1 Council, at its complete discretion, may consider entering into a WIK Agreement with a developer after development consent has been issued.
- 2.2 In particular, Council may consider negotiating a WIK Agreement to:
 - 2.2.1 Enable items in the work schedules of Council's Contribution Plan (CP) to be brought forward.
 - 2.2.2 Not involve any unreasonable financial liabilities for Council.

3 CONTEXT

- 3.1 The implementation of procedures and practices is designed to support a high level of efficiency. Council is responsible for ensuring transparency regarding the costs of professional, administrative, and legal staff involved. Accordingly, Council will:
 - 3.1.1 Ensure that it will adhere to the strict procedures as outlined in this document and in the Policy.
 - 3.1.2 Seek to obtain reimbursement for the costs incurred in negotiating, executing and implementing a WIK Agreement.
 - 3.1.3 Ensure that the Local Infrastructure Contributions Steering Group (Steering Group) will oversee the negotiation of all WIK agreements.
 - 3.1.4 Ensure all negotiations for WIK agreements aim to be efficient, predictable, transparent and accountable in line with the Policy.
 - 3.1.5 Encourage the developer to hold discussions with Council before starting the formal process of entering into a WIK Agreement.

4 PUBLIC INTEREST AND PROPERTY

- 4.1 Council staff with appropriate delegated authority will negotiate a WIK Agreement on behalf of Council. These Council staff (subject to resource capacity) will not be involved in the direct assessment of the relevant Development Application (DA).

5 ASSESSMENT OF A WIK AGREEMENT

- 5.1 Council may, subject to certain criteria being met, accept a provision of a WIK Agreement by a developer in lieu of the payment of contributions. The proposal, in writing and in the form of a letter, must be to Council. Details should include:
 - 5.1.1. The description of the land.
 - 5.1.2. Development consent and Section 7.11 condition.
 - 5.1.3. Relevant Contributions Plan, the Work(s) and Contributions Plan Work(s) value(s).
 - 5.1.4. Description of the proposed works, cost and estimated value of the works.

- 5.1.5. The proposed contributions plan credit.
- 5.2 Council's Infrastructure Contributions Planner will be responsible for recording the application and coordinating the consideration, negotiation and execution of the agreement on behalf of Council.
- 5.3 Once the agreement has been reached in principle, the agreement is to be drafted using Council's WIK Agreement template (DOC2024/029833).
- 5.4 The developer should understand that an application for a WIK Agreement will be considered in accordance with the following criteria:
 - 5.4.1 Works to be undertaken: WIK Agreements will only be negotiated on those works detailed in the relevant CP.
 - 5.4.2 Timing of works:
 - a) Demonstration that earlier timing of the works provides planning and/or public benefit(s).
 - b) No WIK Agreements will be negotiated retrospectively i.e. after works have commenced.
 - 5.4.3 Prejudicial impact: The application must not prejudice the timing or the manner of the provision of the infrastructure for which the contribution was required. Prejudicial impact will have regard of all items in the CP work schedule, not only the item(s) in the request, and will consider any impacts.
 - 5.4.4 Financial Impact: The application must be of reasonable cost when compared to the CP work schedule.
 - 5.4.5 Prior to a formal WIK Agreement being prepared, the developer will accept that the value of works is the amount stated in the CP and ensure the infrastructure meets the necessary standards required by Council. Council will not accept additional costs.
 - 5.4.6 Once formal negotiations commence, requests for additional items or costs will not be considered. Once commenced, non-compliance with the agreement will result in enforcement. Construction of any item in the agreement must not commence until the WIK Agreement has been signed.

6 COUNCIL'S COSTS RELATING TO A WIK AGREEMENT

- 6.1 The developer shall pay Council's full costs in negotiating, executing and implementing the WIK Agreement, including legal costs and the costs of engagement of any independent expert(s).
- 6.1 Council may engage legal representatives for legal opinion following drafting of the WIK Agreement. The developer will be responsible for Council's legal costs with respect to considering variations to the WIK Agreement. Any legal opinion received by Council is confidential.
- 6.2 Council will at all times strive to be fair, reasonable and accountable when seeking the developer to reimburse the costs incurred for negotiating, executing and implementing the WIK Agreement.

7 ACCEPTABILITY OF OFFER

When Council assesses an offer in relation to a WIK Agreement, it will be assessed in accordance with the notations of clause 5 and ensure that:

- 7.1 A WIK Agreement must provide for the delivery of infrastructure that is contained in the works schedule of Council's adopted s7.11 CP.
- 7.2 That any request is in accordance with Council's contribution plan, strategic plans and studies.

- 7.3 The proposal equals the value of the project contained in the works schedule of the contribution plans and the local infrastructure contributions condition by the DA consent. Council will not allow for any further contribution plan credits in any circumstances.

8 INDEPENDENT THIRD PARTY

- 8.1 Council may, at its sole discretion, appoint an independent person(s) to facilitate or otherwise participate in the negotiations or aspects of the WIK Agreement.

9 PROCESSES AND PRACTICES

- 9.1 Council may, at its sole discretion, appoint an independent person(s) to facilitate or otherwise participate in the negotiations or aspects of the WIK Agreement. These may include:
- 9.1.1 Valuation of costs of the construction of the proposed infrastructure.
 - 9.1.2 Factual information requires validation in the course of negotiations.
 - 9.1.3 Sensitive financial or other confidential information must be verified or established in the course of negotiations.
 - 9.1.4 Any dispute resolution as required under the WIK Agreement.

Pre-lodgement

- 9.2 All developers are encouraged to have pre-lodgement discussions and a pre lodgement meeting with Council. The initial discussions should include:
- 9.2.1 The proposed offer for a WIK Agreement.
 - 9.2.2 Costings.
 - 9.2.3 Contributions payable under the DA consent.
 - 9.2.4 Explanation of Council's Policy.
 - 9.2.5 The legal framework.
 - 9.2.6 The procedures for negotiation.
 - 9.2.7 Council will provide its requirements for the design, materials and specifications for the infrastructure.
- 9.3 Following a pre-lodgement meeting, the developer must provide Council with a written letter of offer advising the:
- 9.3.1 Details required to be included as specified in the Policy and this document.
 - 9.3.2 Detailed description of the infrastructure proposed to be undertaken and/or land to be dedicated to Council in lieu of section 7.11 conditions of consent, including location, legal description of the land together with the relationship between the land dedication, works and the relevant CP.
 - 9.3.3 Estimated costs of infrastructure and land value and sufficient level of detail will be required to enable Council to verify the value of works together with timeframes for design, construction and handover of works.
 - 9.3.4 Any draft designs of the proposed infrastructure. The developer should provide to Council any preliminary concept designs as a starting point for discussion with Council as to the proposed infrastructure.
 - 9.3.5 If infrastructure is not on land owned by the developer, then the landowner must provide written consent that they have no objection to the works on their property, relinquish all their rights to enter an agreement for the subject works at a later date, and understand that Council has discretion to accept the land dedication as a contribution at a later date.

- 9.3.6 Information regarding that the proposed infrastructure to be completed will be in full or partially complete in accordance with the CP.
- 9.3.7 Information of the contributions payable on the condition of consent and the proposed WIK Agreement offsetting the condition of consent. Council will only use the value that is provided for in the CP.
- 9.3.8 The developer is to advise if they are appointing a representative in the negotiations of the WIK Agreement.

Council consideration and determination

- 9.4 The Infrastructure Contributions Planner is to assess the letter of offer in accordance with the policy, Council's WIK Agreement templates, adopted s7.11 contribution plans, the relevant Development Consent, specific Council engineering guidelines/policies/specifications and Act and the Regulation, together with any Ministerial Direction. Consideration will also be given to any relevant Practice Note and the assessment will then be tabled at the next Steering Group meeting for approval.
- 9.5 The Steering Group will consider whether a WIK Agreement is suitable.
- 9.6 Oversee the negotiation of the WIK Agreement and ensure all internal Council processes are followed.
- 9.7 Following a decision by the Steering Group, Council will inform the developer, in writing, of its decision.
- 9.8 If Council recommends to enter into the WIK Agreement, drafting of the WIK Agreement should commence.
- 9.9 If Council recommends not to enter into the WIK Agreement, the developer and Council can renegotiate the proposal.

Negotiation of the WIK Agreement

- 9.10 The draft agreement can either be prepared by Council or the developer and should include:
 - 9.10.1 Scope of works.
 - 9.10.2 Rights and responsibilities of each party.
 - 9.10.3 Detailed design for approval.
 - 9.10.4 Offsets that form the agreement.
 - 9.10.5 Any other financial obligations.
- 9.11 Any changes to the draft WIK Agreement, is to be provided in the form of a marked-up version of the draft WIK Agreement together with justification for any amendment.
- 9.12 Council is to provide written confirmation that the WIK Agreement is approved. All parties can sign the agreement in the form of a hard copy or electronic copy. The developer is to sign the agreement first followed by Council.
- 9.13 The WIK Agreement must be signed within three (3) months from the date of notification by Council. After that time the developer will need to seek re-approval by Council.

Approval of Infrastructure (Works)

- 9.14 The developer must obtain all approvals for works and any land dedications. Council and the developer should also ensure all conditions of the WIK Agreement is followed.
- 9.15 A WIK Agreement does not constitute development consent for any works specified in the agreement.

- 9.16 Normal development assessment processes will apply and any modifications to DA consent for works and land dedications will incur fees and these will to be borne solely by the developer and will not be credited against any contributions. The developer must ensure that works be in accordance with Council's design, specification standards or as otherwise agreed.

Construction Phase

- 9.17 As Council ultimately has ownership and responsibility for public facilities, Council must approve commencement of any works.
- 9.18 Once DA approval for the works has been given, the WIK Agreement executed and all compliance matters completed, construction may commence. No additions or alterations to the works and variations to costs should be made to the works without Council's consent in writing. A modification may be required for any additional, variations or alterations to the works and these costs are borne by the developer.
- 9.19 All works must be inspected by Council in accordance with the WIK Agreement and relevant DA Consent. Any defects must be rectified in accordance with the provisions of the WIK Agreement.

Handover Phase

- 9.20 The handover of completed works must be in accordance with the WIK Agreement. The developer must submit all drawings/AutoCAD drawing files or equivalent files as required by Council. The drawings must be provided in electronic format including any notations. PDF documents are not acceptable. The developer will be required to complete and submit any further documentation required by Council.

10 DEVELOPER'S RESPONSIBILITIES

The developer must:

- 10.1 Work with Council to develop a design to achieve a positive outcome for the community and complies with Council's design guides prior to lodgement of a DA for the works.
- 10.2 Comply with all required statutory requirements and regulations and in accordance with the WIK Agreement.
- 10.3 Indemnify Council against any claims or otherwise related to the works.
- 10.4 Provide public risk insurance policy with a minimum liability of \$20,000,000 and present Council with a copy of this policy and other insurances set out in the WIK Agreement.
- 10.5 Not vary the agreed works without written approval from Council.
- 10.6 Note Council will not be liable for any variations between the value of the works/land in the CP and estimated construction costs.
- 10.7 Notify Council when all inspections are required as per the WIK Agreement and/or DA Consent.
- 10.8 Provide Council with a land tax clearance issued by the Office of State Revenue dated less than one month prior to the land transfer to Council.
- 10.9 Pay all costs incurred by Council and in particular in appointing a qualified quantity surveyor, if required, to provide a "fair value" valuation for the asset/s to be dedicated to Council. The valuation must be carried out by a registered valuer and comply with the NSW Department of Local Government Code of Accounting Practice and Financial Reporting.
- 10.10 On completion of the works the developer must comply in accordance with the WIK Agreement regarding hand over dates, drawings and any provisions relating to rectification of defects.
- 10.11 Provide security for rectification of defects for the duration of the defect liability period in accordance with the WIK Agreement and/or Council's engineering specifications.

11 VALUE OF WORKS OFFSET AGAINST CONTRIBUTIONS

- 11.1 The purpose of providing a WIK is to satisfy the conditions of a DA consent relating to local infrastructure contributions.
- 11.2 Council will only offset the value of a WIK against the contribution required for that particular type of work, for example, a local park will only apply to open space and recreation contributions.
- 11.3 Council will only accept land and/or a WIK to the value of the contributions required in the consent. Councils may accept a WIK where the combined value of the land and works exceeds the value of the contribution required by the consent, should the developer not request additional contribution offsets.
- 11.4 WIK credits will be applied as an agreed reduction of contributions payable under the relevant development consent in accordance with s 7.11(5) of the EPA Act. The condition requiring the payment of the contributions does not need to be modified. WIK credits cannot be applied once contributions have been paid.
- 11.5 Where the value of works undertaken is equal to the contribution required as a condition of consent, Council will consider those works to be the equivalent of the payment of the contribution in full.
- 11.6 Where the value of the works undertaken is less than the contribution required as a condition of consent, the developer will be required to pay the difference.
- 11.7 Council will not offset against the value of required contributions, the value of any work which is required under Section 4.17 of the Act, being works required as a result of the considerations of Section 4.15 of the Act.
- 11.8 Council does not accept any financial risk associated with the construction of the works and will only cover those costs agreed to in the WIK Agreement entered into by the developer. Any costs beyond this will be borne by the developer.

12 SECURITY ARRANGEMENTS

- 12.1 A requirement of the WIK Agreement is that satisfactory security arrangements must be in place. Generally works are either required to be completed prior to a subdivision certificate being issued or after a subdivision certificate is issued.
- 12.2 All WIKs are to be completed prior to a subdivision certificate being issued for the DA consent which is the subject of the contributions. If this cannot be achieved by any reason, the developer must approach Council to discuss this matter further. In particular, the developer should refer to Council's policy on deferred or periodic payments in the CP.

13 OWNERSHIP OF WORKS PROVIDED BY WIK Agreements

- 13.1 Works become the property of the Council at the date they are handed over to Council or in accordance with the WIK Agreement.
- 13.2 No credit will be provided for the works until they have been handed over to the Council or in the case of works to be completed after a subdivision certificate has been issued, or other appropriate arrangements have been put in place.
- 13.3 When the work undertaken by the developer is for the design of an item of infrastructure, the design work will become the intellectual property of the Council. All plans and related documentation must be provided to the Council.

14 DISPUTE RESOLUTION

- 14.1 In the event of a dispute, all parties should refer to the WIK Agreement.

15 POLICY DEFINITIONS AND ABBREVIATIONS

Act	Means the <i>Environment Planning and Assessment Act 1979 (NSW)</i> .
Applicant	The person entitled to act upon a Development Consent.
Contribution	Means a contribution referred to in section 7.11 of the Act.
Contribution Plan (CP)	The applicable Section 7.11 Contribution Plan.
Contribution Plan credit	Is the dollar amount, in accordance with the works schedule of the contributions plan, by which the value of an approved works in kind agreement is to be applied in part or full satisfaction of a contributions plan requirement.
Council	Means Cessnock City Council.
Development Application	Has the same meaning as in the Act.
Development Consent	Has the same meaning as in the Act.
Regulation	Means the <i>Environmental Planning and Assessment Regulation 2021 (NSW)</i> .
WIK	Is the undertaking of work, or the provision of a facility, or the dedication of land and includes reference to contribution offsets.
WIK Application	An application for WIK, contribution offsets or combinations thereof.
WIK Agreement	A formal agreement that must be entered into with Council following Council approval of an application under this policy.
WIK Proposal	A proposal for WIK made by the Applicant to the Council for approval by the Council in line with this policy.

16 POLICY AUTHORISATIONS

No.	Authorised Function	Authorised Business Unit / Role(s)
	Negotiation of Works in Kind Agreements	Infrastructure Contributions Planner

17 POLICY ADMINISTRATION

Directorate	Planning and Environment		
Responsible Officer	Strategic Planning Manager		
Associated Procedure			
Policy Review Date	TBA	Is this a local policy pursuant to Part 3, Chapter 7 of the <i>Local Government Act 1993 (NSW)</i> ?	No
Document Reference Number	DOC2024/029822		

This policy supports Council's compliance with the following legislation:

- Section 49 of Division 3 of Part 2 of the *Local Government Act 1993*;
- Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979*
- Division 1A of Part 4 of the Regulation;
- Planning Agreement Practice Note – February 2021; and
- Schedule 1 of the GIPA Regulation

This policy contributes to the achievement of the following desired outcome or objectives as per Council's Delivery Program:

A Sustainable & Healthy Environment

Objective 3.1 Protecting & enhancing the natural environment and the rural character of the area.

Civil Leadership & Effective Governance

Objective 5.3: Making Council more responsive to the community.

Related Documents (include reference document numbers)	<ul style="list-style-type: none"> ▪ WIK Agreement Policy (DOC2025/****) ▪ Records Management Policy (DOC2019/038769) ▪ Complaints Handling policy (DOC2018/048382) ▪ Privacy Management Plan (DOC2014/005148) ▪ Strategic Planning Statement (DOC2018/087261) ▪ Fraud Control and Corruption Prevention Policy (DOC2020/027334)
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18 POLICY HISTORY

Revision	Date Approved / Authority	Description Of Changes
1	<<Enter text...>>	<<Enter text...>>