

## CONTENTS

<b>PART A - INTRODUCTION .....</b>	<b>2</b>
1. OBJECTIVES .....	2
2. SCOPE.....	2
3. STATEMENT .....	2
4. PUBLIC INTEREST AND PROBITY .....	2
<b>PART B – POLICY CONTENT .....</b>	<b>3</b>
5. WIK AGREEMENT .....	3
6. LEGISLATIVE FRAMEWORK .....	3
<b>PART C - ADMINISTRATION.....</b>	<b>4</b>
7. ROLES AND RESPONSIBILITIES .....	4
8. POLICY DEFINITIONS AND ABBREVIATIONS.....	5
9. POLICY AUTHORISATIONS.....	5
10. POLICY ADMINISTRATION.....	5
11. POLICY HISTORY.....	6
12. APPENDICES.....	6

### 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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## PART A - INTRODUCTION

### 1. OBJECTIVES

The objectives of this policy are to:

- 1.1. Establish a clear, open, transparent and accountable framework to govern the negotiation, use and implementation of Works in Kind (WIK) Agreements by Council.
- 1.2. Ensure that the framework is sound, enables efficient, fair and accountable negotiations and implementation of WIK Agreements.
- 1.3. Promotes trust and confidence in the processes of negotiation, execution and implementation of WIK Agreements.
- 1.4. Ensure compliance with regulatory requirements under the *Environmental Planning and Assessment Act 1979* (NSW) ('the Act') governing WIK Agreements.

### 2. SCOPE

- 2.1. This policy applies to the negotiation, use and implementation of WIK Agreements within the Cessnock Local Government Area (LGA).
- 2.2. This policy shall not limit or fetter Council's statutory discretion or duty in determining development applications under the Act.
- 2.3. This policy should be read in conjunction with Council's adopted local infrastructure contribution plans and templates.

### 3. STATEMENT

Council is committed to the equitable and transparent approach to the negotiation, development and management of WIK Agreements to facilitate the delivery of public infrastructure to meet the needs of the community.

### 4. PUBLIC INTEREST AND PROBITY

#### ***Probity***

- 4.1. Public probity is fundamentally important to Council as it will ensure that the negotiation of any WIK Agreement proposal is fair, transparent and is directed at achieving public benefit in an appropriate manner, free of fraud and corruption.
- 4.2. Council will:
  - 4.2.1. Ensure the developer has access to [Council's Statement of Business Ethics](#)
  - 4.2.2. Provide all stakeholders relevant information to understand each party's role in negotiating a WIK Agreement.
  - 4.2.3. Ensure appropriate delegations and separation of responsibilities are maintained when considering Development Applications that involve WIK Agreements.
  - 4.2.4. Ensure any potential for conflict of interest within Council will be appropriately managed in accordance with [Council's Code of Conduct](#).

- 4.2.5. Take every step to ensure that conflicts of interest (actual or perceived) are declared, managed or mitigated, if not eliminated to the greatest extent possible.

### ***Fraud Control and Corruption Prevention***

- 4.3. Council meets high standard of integrity and accountability when negotiating WIK Agreements. Council has a responsibility to:
  - 4.3.1. Protect taxpayer funded resources and assets from fraud and corruption.
  - 4.3.2. Ensure Council decisions and actions are free from fraud and corruption.
- 4.4. In this respect all parties involved with negotiating a WIK Agreement will adhere to Council's Corruption Prevention Policy.

## **PART B – POLICY CONTENT**

### **5. WIK AGREEMENT**

Council at its sole discretion will decide whether to accept a WIK Agreement in lieu of monetary Contributions towards the provision of public infrastructure. The public infrastructure must be one or more projects listed from the works schedule in Council's adopted s7.11 Contributions Plan. Where Council agrees to accept the provision of WIK Agreement, they must be the subject of a formal WIK Agreement. This agreement is a legally binding contract that is entered into by both Applicant and Council.

Council will not publicly report WIK Agreements for notification. The Works Schedule in the Contribution Plans has already been exhibited and adopted by Council. This agreement is of an administrative nature to bring forward infrastructure in a relevant area rather than having Council complete the works.

Contributions will only be credited in relation to the relevant category i.e open space facilities, community facilities, roadworks facilities or drainage. This ensures the delivery of all infrastructure required to be constructed in the contribution plan is not compromised.

### **6. LEGISLATIVE FRAMEWORK**

- 6.1. Section 7.11(1) of the Act provides that if a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public facilities within a council's local government area, the consent authority may grant the development consent subject to a condition requiring, among other things, that the developer pay to the Council a monetary section 7.11 contribution.
- 6.2. Section 7.11(3) of the Act provides that:
  - 6.2.1. If a consent authority has provided public amenities or public services within a council's area in preparation for or to facilitate the carrying out of development in the area, and
  - 6.2.2. Development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services, the consent authority may grant the development consent subject to a condition requiring, among other things, that the developer pay to the Council a monetary section 7.11 contribution.

- 6.3 Section 7.11(5)(b) of the Act enables the consent authority to accept the provision of a material public benefit in part or full satisfaction of the payment by a developer of a monetary section 7.11 contribution.
- 6.4 A WIKA is an agreement between the Council and a developer entered into for the purpose of section 7.11(5)(b) of the Act under which the Council accepts the provision of a material public benefit by the developer in part or full satisfaction of the obligation to pay a monetary section 7.11 contribution.
- 6.5 Competitive tendering under section 55(1) of the *Local Government Act 1993* (NSW) is not feasible before the Council enters into a WIKA because the only possible primary party to the WIKA other than Council is the person having the benefit of a development consent requiring the payment of a monetary section 7.11 contribution which will be wholly or partially offset under the WIKA. For this reason, the Council has resolved that tenders will not be invited before the Council enters into such an agreement.

## PART C - ADMINISTRATION

### 7. ROLES AND RESPONSIBILITIES

#### ***Compliance, monitoring and review***

- 7.1. All compliance, monitoring and review of a WIK Agreement is to be conducted in accordance with the detail contained in the individual WIK Agreement, the Act, the Regulation and any direction from the Department of Planning, Housing and Infrastructure.

#### ***Responsibilities***

Council's:

- 7.2. Strategic Planning Manager is responsible for overseeing and supporting Council staff in negotiation of WIK Agreements, implementation and review of this policy.
- 7.3. Local Infrastructure Contributions Steering Group will oversee entering into a negotiation of a WIK Agreement including, but not limited to, reviewing the proposed offer and providing advice for the WIK Agreement.
- 7.4. Senior Infrastructure Contributions Planner is responsible for the negotiation of the WIK Agreement with the developer and reporting to the Local Infrastructure Contributions Steering Group and Strategic Planning Manager.

#### ***Reporting***

- 7.5. After entering into a WIK Agreement with Council, any future reporting will be in accordance with the terms of the WIK Agreement.

#### ***Privacy and personal information handling***

- 7.6. Personal information collected concerning WIK Agreements is being collected for the purpose of implementing this policy and WIK Agreements. This information will be used for the purpose outlined, related administrative functions, compliance and complaint handling, internal auditing, and in accordance with Council's Privacy Management Plan and Privacy Statement which can be found on Council's website.

#### ***Records management***

- 7.7. Staff must maintain all records relevant to administering this policy in accordance with Council's Records Management Policy.

## Complaints

7.8. Complaints or disputes concerning matters subject to a WIK Agreement are to be dealt with in accordance with dispute resolution clauses of that agreement.

7.9. Complaints regarding any other aspect of this policy should be lodged in accordance with Council's Complaints Handling policy.

## 8. POLICY DEFINITIONS AND ABBREVIATIONS

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

## 9. POLICY AUTHORISATIONS

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

## 10. POLICY ADMINISTRATION

<b>Directorate</b>	Planning and Environment		
<b>Responsible Officer</b>	Strategic Planning Manager		
<b>Associated Procedure</b>			
<b>Policy Review Date</b>	TBA	Is this a local policy pursuant to Part 3,	No

		Chapter 7 of the <i>Local Government Act 1993</i> (NSW)?	
<b>Document Reference Number</b>	DOC2024/029832		
This policy supports Council's compliance with the following legislation:			
<ul style="list-style-type: none"><li>– Section 49 of Division 3 of Part 2 of the <i>Local Government Act 1993</i>;</li><li>– Subdivision 2 of Division 7.1 of Part 7 of the <i>Environmental Planning and Assessment Act 1979</i></li><li>– Division 1A of Part 4 of the Regulation;</li><li>– Planning Agreement Practice Note – February 2021; and</li><li>– Schedule 1 of the GIPA Regulation</li></ul>			
This policy contributes to the achievement of the following desired outcome or objectives as per Council's Delivery Program:			
<b>A Sustainable &amp; Healthy Environment</b>			
Objective 3.1 Protecting & enhancing the natural environment and the rural character of the area.			
<b>Civil Leadership &amp; Effective Governance</b>			
Objective 5.3: Making Council more responsive to the community.			
<b>Related Documents (include reference document numbers)</b>	<ul style="list-style-type: none"><li>▪ Records Management Policy (DOC2019/038769)</li><li>▪ Complaints Handling policy (DOC2018/048382)</li><li>▪ Privacy Management Plan (DOC2014/005148)</li><li>▪ Strategic Planning Statement (DOC2018/087261)</li><li>▪ Fraud Control and Corruption Prevention Policy (DOC2020/027334)</li></ul>		

## 11. POLICY HISTORY

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

## 12. APPENDICES