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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

The information contained in this publication is based on knowledge and understanding at the time of the adoption date and may not be accurate, current or complete at the time of viewing. While every effort has been made to ensure the accuracy of the information in this publication, Cessnock City Council expressly disclaims any liability to any person in respect of anything done or not done as a result of the contents of this publication or the data provided therein. Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

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## PART A - INTRODUCTION

### 1 PREAMBLE

- 1.1 Council's Land Dedication Policy and Land Dedication Guideline have been prepared to manage Land Dedication Proposals and address the financial implications to Council of Dedicated Land.
- 1.2 Council has historically accepted Dedicated Land, despite the fact that much of it is not strategically required for community use and is unusable due to environmental or infrastructure constraints, creating a long-term maintenance burden for Council.
- 1.3 In the future, Council is likely to receive significantly more Dedicated Land from private subdivisions, cumulatively increasing Council's long term land maintenance burden.
- 1.4 While it is acknowledged that green space improves urban amenity, it comes with ongoing maintenance costs and Council is not obligated to accept land without mechanisms, like Planning Agreements, to manage the maintenance costs associated with that land.

### 2 GUIDELINE OBJECTIVES

- 2.1 To provide additional guidance in relation to:
  - a. Land dedication requests and Council's requirements and process for Dedicated Land.
  - b. Acceptable and unacceptable Dedicated Land.
  - c. The categorisation of Dedicated Land.
  - d. The calculation of Council's Maintenance Fee for Dedicated Land.

### 3 GUIDELINE SCOPE

- 3.1 This Guideline applies to land that is proposed to be dedicated to Council, but is not specifically identified in an adopted Council contribution plan or voluntary planning agreement, and is determined by Council to be excess to its strategic requirements.
- 3.2 This Guideline does not apply to the strategic acquisition of land by Council.
- 3.3 This Guideline does not apply to land that is proposed to be dedicated pursuant to s.9 of the *Roads Act 1993* for the purpose of a public road, which has development consent.

## PART B – GUIDELINES

### 4 DEDICATED LAND MUST BE IN THE PUBLIC INTEREST

- 4.1 The primary concern for Council in accepting Dedicated Land is whether the land dedication is in the public interest.
- 4.2 Some of the factors influencing Council's decision to accept Dedicated Land include:
  - a. The cost of labour and materials to maintain Dedicated Land in perpetuity.
  - b. Whether the land is Fit for Purpose.
  - c. How many people are likely to benefit from the Dedicated Land.
  - d. Whether there are any acceptable alternatives to land dedication, e.g. community title.
- 4.3 For these reasons, land that is proposed to be dedicated to Council must:

- a. Have an identified community or operational use and be Fit for Purpose, e.g. as a pedestrian connection, shared pathway, off-leash dog area, lookout or viewing platform, active recreation space, natural play space, public art, interpretative use, technological use, native habitat, or environmental reserve, etc.
  - b. Be designed and constructed to ensure minimal ongoing maintenance and management by Council.
  - c. Not result in unreasonable financial, legal, or operational costs for Council.
  - d. Not require remediation or rectification of any sort following dedication to Council.
- 4.4** Council reserves the right to refuse the dedication of sportsgrounds, parks or community facilities that are determined to be excess to Council's strategic requirements, that are encumbered, or not Fit for Purpose.

## **5 DEDICATED LAND MUST BE ACCEPTABLE IN ITS CURRENT STATE**

- 5.1** Council will not accept land that is:
- a. Contaminated or potentially contaminated.
  - b. Is affected by priority weeds or invasive species.
  - c. Is subject to existing property rights in favour of a third party or parties (other than public authorities).
- 5.2** Previously contaminated land will only be considered if:
- a. Early discussions are undertaken between the developer, land owner and Council to determine specific requirements for remediation of the land proposed for dedication.
  - b. Council is satisfied, based on information provided by the applicant where required, that the land is suitable for its intended use in accordance with *State Environmental Planning Policy (Resilience and Hazards) 2021*.
  - c. Land remediation is carried out in accordance with Part 5 of Council's Contaminated Land Policy – Land Use Planning.
  - d. Where the land requires an on-going Environmental Management Plan, the developer or owner is to provide a Site Audit, including a Site Audit Certificate and Site Audit Statement, to Council for consideration prior to acceptance of any such land.
  - e. the land is considered by Council to be Fit for Purpose following remediation.
  - f. Council will not be burdened with financial, legal, or operational costs following land dedication, as a result of the land being previously contaminated.
  - g. Council will not be burdened with any additional remediation or rectification costs in relation to the land being previously contaminated.
- 5.3** Council reserves the right to refuse the dedication of stormwater infrastructure land which, in Council's opinion, is not maximised for operational efficiency, or does not service an approved subdivision.
- 5.4** Land that is proposed to be dedicated to Council must:
- a. Have adequate connectivity to other similar uses and a population that will use it.
  - b. Not be excessive, but of a scale that, in Council's opinion, is appropriate to the location and the population that will use it.

- c. Maximise opportunities for a wide range of uses.
- d. Not be excessively constrained or part of an Asset Protection Zone.
- e. Where applicable, be designed and constructed in accordance with the relevant Vegetation Management Plan approved for the land, and in accordance with all relevant conditions of development consent for works on the land.
- f. Where applicable, must be designed and constructed in accordance with Council's adopted strategies and plans, such as Council's adopted Recreation and Open Space Strategic Plan or Community Infrastructure Strategic Plan.

## 6 DEDICATED LAND MUST BE APPROVED BY COUNCIL

**6.1** Acceptance of Dedicated Land will be at the sole discretion of Council and merit assessed on a case-by-case basis. In determining a proposal, Council will consider any applicable legislation, ministerial directions, and the practice notes issued by the NSW Government.

**6.2** A request to dedicate land to Council must be supported by a Land Dedication Proposal, containing:

- a. The legal description of the land that is proposed to be dedicated to Council.
- b. A survey plan identifying the extent of the land and any improvements or significant natural features within the land, including habitat for threatened species, or areas of cultural significance.
- c. A comprehensive description of the land, including its condition, access, slope, topography, land use zoning, and current use.
- d. The intended purpose of the land to be dedicated (e.g. for drainage, or a community purpose, noting that in some circumstances land may fit into more than one category).
- e. Any specific requirements relating to the identification, protection and management of potential Aboriginal artefacts or European heritage on the land, this may include the preparation of a cultural heritage assessment and/or cultural heritage management plan or archaeological assessment and/or conservation management plan.
- f. Any improvements to the land, which presently exist, or are proposed to be undertaken prior to dedication, including the standards or specifications for the improvements.
- g. Whether the land contains infrastructure, e.g. transmission, sewerage, water, or stormwater infrastructure or easements.

Note: Early consideration should be given to the use and ownership options for land burdened by infrastructure or easements, including consultation with Council if the land is proposed to be dedicated to ensure decisions can be made in a timely manner.

- h. The quality of the land and its interface with the urban environment.
- i. The range of encumbrances restricting community use and enjoyment of the land.
- j. Recognition of cultural landscapes and significant view lines.
- k. Protection of significant environmental features the land.

**6.3** A Planning Agreement must be in place with Council to ensure the ongoing maintenance of the land and any improvements on the land.

**6.4** The person dedicating the land to Council must agree to:

- a. Maintain the land at their expense for a period of at least 5 years (the Initial Maintenance Period), commencing from the day after the land is dedicated to Council.
- b. Provide to Council, a maintenance bond or bank guarantee in respect of the Initial Maintenance Period.

Note: The maintenance bond or bank guarantee shall be 5% of the total land value. The maintenance bond will be refunded or returned at the end of the Initial Maintenance Period, subject to the land having being maintained to Council's satisfaction and the terms of any Voluntary Planning Agreement.

- c. Comply with any reasonable direction of Council in relation to the land during the Initial Maintenance Period.
- d. Pay a Maintenance Fee to the Council upon dedication of the land, or provide an alternative arrangement of equivalent value, subject to approval from Council's Development Contributions Steering Group. The Maintenance Fee will be used by Council to maintain Dedicated Land in the Local Government Area for a period of time, following the Initial Maintenance Period.

**6.5** The Maintenance Fee will be calculated by Council and in consideration of the Land Categories and Land Dedication Rates referenced in **Appendix A**, and the equation below:

$$C = (M \times T) / R$$

Where:

- C is the Maintenance Fee, payable on dedication of the land.
- M is the Annual Maintenance Cost (i.e. the Maintenance Rate multiplied by the land area in hectares).
- T is the designated maintenance period for each category of land, in addition to the Initial Maintenance Period.
- R is CPI rate of 2.5%.

**6.6** The Land Dedication Rates in **Appendix A** are baseline rates. The final Maintenance Rate that will be used by Council to calculate the Maintenance Fee will depend on the nature of the land to be dedicated, noting that a higher rate may apply to more complex or highly constrained land.

**6.7** The Maintenance Fee for land containing multiple Land Categories will be calculated proportionally.

**6.8** The Maintenance Fee will be consolidated into a single Council fund and used, at Council's discretion, to assist with the ongoing maintenance of Dedicated Land within the LGA.

## 7 REQUIREMENTS UPON LAND DEDICATION

**7.1** Land that is subject to the Land Dedication Policy must not be dedicated to Council unless a Planning Agreement is executed in relation to the land in accordance with Council's Land Dedication Policy and Planning Agreement Policy.

**7.2** Where requested by Council, a draft Plan of Management (POM) must be prepared by a suitably qualified person or organisation and lodged with Council for consideration, exhibition, and determination. All costs associated with the preparation of the draft POM shall be borne by the Developer. The draft POM is to conform to the requirements of the *Local Government Act 1993*.

**7.3** A Works-as-Executed Plan is to be provided in relation to the land, any embellishments within the land, and any associated warranties relating to the maintenance.

- 7.4 The Developer is to provide a schedule of works with a cost estimate for all components of the works for the ongoing management and maintenance of the land.

## PART C – ADMINISTRATION

### 8 GUIDELINE DEFINITIONS AND ABBREVIATIONS

<b>Annual Maintenance Cost</b>	Means the Maintenance Rate multiplied by the area of the land to be dedicated in hectares.
<b>Contaminated Land</b>	Means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.
<b>Council</b>	Means Cessnock City Council.
<b>Associated Development</b>	Means the approved development that is associated with the Land Dedication Proposal.
<b>Dedicated land</b>	Means any land subject to this Policy that is proposed to be dedicated to Council.
<b>Fit for Purpose</b>	Means the Dedicated Land is unencumbered and is suitable to fulfil its intended use in line with criteria outlined in Council's adopted plans, policies and strategies.
<b>Infrastructure Land</b>	Means land containing (or which is planned to contain): <ul style="list-style-type: none"> <li>- a utility, easement or service;</li> <li>- stormwater infrastructure; or</li> <li>- a major infrastructure corridor.</li> </ul>
<b>Initial Maintenance Period</b>	Means the first five years, starting from the day after the land is dedicated to Council, during which the person who dedicated the land is responsible for maintaining it at their own expense.
<b>Land Category</b>	Means a category of land included in Appendix A.
<b>Land Dedication Proposal</b>	Means a written request to Council, made in accordance with the Land Dedication Guidelines, proposing to dedicate land to Council.
<b>Local Infrastructure Contributions Plan</b>	Means plans that apply levies to development to fund community infrastructure, such as roads, stormwater management facilities, open space and recreational facilities.
<b>Maintenance Fee</b>	Means a contribution to Council, paid upon dedication of the land, which is used by Council to help maintain the land for a finite period commencing at the end of the Initial Maintenance Period.
<b>Maintenance Rate</b>	Means the annual per hectare maintenance rate associated with each category of Dedicated Land.  <u>Note:</u> The Maintenance Rate for each category of Dedicated Land is provided in <b>Appendix A</b> .
<b>Plan of Management (POM)</b>	Means a Plan prepared under the provisions of the <i>Local Government Act 1993</i> for all public land that is classified 'community land', to guide how the land will be managed, including the directions for planning, resource management and maintenance of the land.



<b>Planning Agreement</b>	Is a voluntary agreement or other arrangement between a planning authority (or two or more planning authorities) and a person (developer) who has sought a change to an environmental planning instrument or who has made, or proposes to make, a development application, entered into pursuant to section 7.4 of the Act.
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## 9 POLICY AUTHORISATIONS

No.	Authorised Function	Authorised Business Unit / Role(s)
	Negotiation of Planning Agreements	Infrastructure Contributions Planner
	Expenditure of funds collected	General Manager or Relevant Unit Director

## 10 POLICY ADMINISTRATION

Directorate	Planning and Environment		
Responsible Officer	Strategic Planning Manager		
Associated Procedure	Senior Infrastructure Contributions Planner		
Policy Review Date	TBA [Actual date - three years from date of adoption unless legislated otherwise]	Is this a local policy pursuant to Part 3, Chapter 7 of the Local Government Act 1993 (NSW)?	No
Document Reference Number	DOC2025/105382		
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 Local Government Act 1993;</li><li>▪ Subdivision 2 of Division 7.1 of Part 7 of the Environmental Planning and Assessment Act 1979</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.			
Related Documents (include reference document numbers)  [Please include Policies, Protocols, Procedures, SOPs, and templates where relevant].	<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...>> <i>[Must include the ELT or Council minute number]</i>	<<Enter text...>> <i>[New policy adopted]</i>
2	<<Enter text...>>	<<Enter text...>> <i>[Periodic review]</i>

## 12 APPENDICES

### Appendix A – Land Categories and Baseline Maintenance Rates

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## APPENDIX A: LAND CATEGORIES & BASELINE MAINTENANCE RATES

1. The following Land Categories and Maintenance Rates will be used by Council to Calculate the baseline Maintenance Fee for Dedicated Land.
2. It is possible that Dedicated Land may fit within more than one Land Category. In such cases, Dedicated Land will be assessed under each applicable Land Category and the Maintenance Fee calculated accordingly.
3. The Annual Maintenance Rate outlined in the table below will be indexed and adjusted quarterly in accordance with the Sydney Consumer Price Index (CPI) applicable to each quarter. The CPI is published by the Australian Bureau of Statistics (ABS). Please refer to the ABS website [www.abs.gov.au](http://www.abs.gov.au) for information regarding the CPI.
4. The Time Periods nominated in the Table below are in addition to the Initial Maintenance Period required by Council for Dedicated Land.

Land Category	Definition	Annual Maintenance Rate <sup>3</sup> per Hectare	Time Period <sup>4</sup>
<b>Natural areas (riparian)</b>	Natural wetlands, watercourses, foreshores and riparian land. This includes land defined under section 36(4)(a), 35(5)(b), 36(5)(d) and 36(5)(e) of the Act and sections 110 and 111 of the Regulation.	\$26,080.76	10 Years
<b>Natural areas (non-riparian)</b>	This includes natural areas as defined in section 36(4)(a), 36(5)(a) and 36(5)(c) of the Act and sections 107 and 109 of the Regulation (e.g. bushland, escarpment, etc.)	\$21,058.37	10 Years
<b>Active open space</b>	Active open space designed for formal recreational activities like sportsgrounds, playgrounds and ovals. This includes sportsgrounds as defined in section 36(4)(b) of the Act and section 103 of the Regulation.	\$72,620.59	15 Years
<b>Passive open space</b>	Open space land with minimal infrastructure intended for low-intensity, informal recreation (e.g. pocket parks and nature reserves). This includes parks as defined in section 36(4)(c) of the Act and section 104 of the Regulation.	\$46,247.83	10 Years
<b>Utility easements</b>	Land required for the provision of a utility that is restricting the use of the land. This includes electricity, gas, sewer and water supply pipe easements. This would generally be classified as general community use land under section 36(4)(e) of the Act and section 106 of the Regulation.	\$10,152.14	5 Years
<b>Land with engineered stormwater assets</b>	This includes land with engineered stormwater management assets (e.g. gross pollutant traps, basins, channels, water sensitive urban design infrastructure, etc.) dedicated to Council as per section 49(3) of the Act.	For assets < 1,250m <sup>2</sup> \$284,841.58  For assets > 1,250m <sup>2</sup> & < 5,000m <sup>2</sup> \$180,484.66  For assets > 5,000m <sup>2</sup> \$114,336.32	5 Years