

## 12.1 COMMENCE REVIEW OF LOCAL INFRASTRUCTURE DELIVERY POLICIES

**File Number: 12275#283**

### EXECUTIVE SUMMARY

The purpose of this report is to seek Councils support to exhibit proposed changes to Councils Local Infrastructure delivery policy suite of documents.

Last year, Council staff commenced a review of the existing Planning Agreements Policy, existing Dedication of Land Policy and drafted a new Works-in-Kind Policy to ensure Council has the right framework in place to plan and deliver for the expected significant growth and development in our Shire.

The policy framework has been developed acknowledging the broader review and recommendations being undertaken by the State government and is being brought forward to ensure Councils interests are preserved.

A pilot approach to the new policies commenced late last year to test the effectiveness of the proposed new approach, with the outcomes showing positive signs for Council, the community and for landowners. The draft Policies are now in a format ready for public exhibition.

### RECOMMENDATION

That Council:

1. Publicly Exhibit the Planning Policy Framework consisting of the Planning Agreements Policy, Dedication of Land Policy, the Works-in-Kind Policy and the related attachments for a period of 28 days with a further 14 days for submissions.
2. Note that a report will come to Council following the exhibition period outlining submissions received and any proposed changes

### REPORT

#### Background to the Local infrastructure Delivery Plan

The intent of this review is to produce a predictable policy framework to direct the timely delivery of local infrastructure while at the same time promote the unique character and values of our Shire, support communities experiencing change and to help match infrastructure where it is needed and to the standard we want and expect.

The initial drafting of the policy framework commenced within the context the broader review and recommendations being undertaken by the State Government and a review of what is working well, what needs improvement, what were our gaps and to ensure we get the best possible outcomes for all parties, particularly our Community.

*Wollondilly Contributions Plan (WCP) 2020*, operates in concert with Council's *Planning Agreements Policy* and the *Dedication of Land Policy* to plan and deliver local infrastructure contributions.

The NSW Productivity Commissioner's *Review of Infrastructure Contributions in New South Wales (December 2020)*, also recommends that delivery of developer-led local infrastructure through Material Public Benefit, commonly referred to as "Works in Kind" be endorsed. To give effect to this as a means of timely local infrastructure delivery, Council will require a *Works-in-Kind (or WIKA) Policy*.

This report outlines broadly the three draft policies that have been drafted for public consultation.

## Voluntary Planning Agreements

The *Planning Agreements Policy* was first adopted by Council in 2015 and has not been reviewed since. The Policy is now due for review. In that time:

- Council has 27 executed Planning Agreements valued at \$123.38M of local infrastructure, 41 hectares of land dedicated to Council supporting 4,474 new households. There are 6 VPAs currently under negotiation. This compares to 20 executed VPAs at Camden Council and 9 VPAs at Campbelltown Council over the same time.
- Planning Agreements take on average 4 years from initiation to execution. This includes 1 year to negotiate proposed infrastructure items, 1.2 years taken on legal drafting and 1 year for developers to execute endorsed agreements and the remaining time spent on legislated processing requirements.
- In the last six years, Council has received only four public submissions (all of these being for two separate VPAs in Wilton). The public notification and decision making processes are set by statutory timeframes and no change is proposed.

Given release of the *Kaldas Review into Planning Governance* (Chaired by former Deputy Police Commissioner Nick Kaldas) (November 2019), *Environmental Planning and Assessment Amendment (Development Contributions) Regulation* of 12 February 2021 and *Planning Agreements Practice Note* (February 2021), there is also an opportunity to review Council's priorities and processes to ensure equitable negotiation, implementation and monitoring of developer-led infrastructure delivery.

To look for efficiencies to address the above issues, over the last year, Council staff have trialled a standard template agreement, drafted by Council's solicitors, with two of the most recent planning agreements. This has been very successful in terms of time management, negotiation, providing clarity to developers and the community and means that the planning agreement process can focus on the actual public benefits negotiation process, rather than legal and policy negotiation which should be clear and non-negotiable.

The following is a high level overview of the of the policy and template agreements, which embed Council's standard clauses:

- The focus of the review is to affirm Council's policy position of design and quality of works, security arrangements, document execution and handover processes;
- Give regard to the *Planning Agreements Practice Note* (February 2021).
- Align offset value of development contributions to the Contributions Plan. The current policy of offsetting direct development works is creating a financial shortfall in the contributions plans and means that Council and the community are actually paying for private development. Consistent with industry practice and the Local Contributions Plan, developers should only expect to offset provision of contributions items, at the value in the Plan and should not expect settlement until the end of the life of the plan after all contributions have been paid to Council and there are funds available.
- Security provisions consistent with Council Bond's Policy and Contributions Plan including registration of the Planning Agreement on Title, a 200% security for works, Part 6 Certificate for monetary contributions and the acquisition of land for \$1.
- Reporting standards to support transparency and monitoring of delivery
- In terms of ensuring that a user pays system is in place for planning agreements, fees are payable by the developer / applicant in accordance with Council's Adopted Fees and Charges.

## Dedication of Land Policy

The *Dedication of Lands Policy* (DoL) was first adopted in June 2014. The DoL Policy was reviewed in June 2016 and was subject to public notification at that time. The Policy has since been further reviewed in response to growth challenges experience by Council over the past few years, and to ensure a robust policy framework is in place to protect Council and community interests.

The DoL Policy applies where land is proposed to be dedicated to Council and ensures that a developer makes a contribution for in perpetuity maintenance. To give effect to the Dedication of Land Policy, a developer needs to voluntarily make an offer to enter into a Planning Agreement (VPA).

To comply with the *Environmental Planning and Assessment Act 1979* and to conform with IPART guidelines, this review proposes to clarify that the DoL Policy's mandatory application does not apply to land and work items listed in an adopted Local Contributions Plan. That said, there is nothing to prevent a developer from making an offer voluntarily to Council.

Under the DoL Policy, Developers are required to undertake the first five years maintenance and at the time of dedication, make a monetary contribution to Council for 30 years maintenance. Of the 27 executed Planning Agreements, 12 include monetary contributions towards maintenance (of a kind provided for under this Policy) for stormwater facilities of \$6,009,208, with \$2,269,876 having been paid to date. These funds can only be used for the maintenance of the facilities they have been collected for.

While the policy has been in place for eight years and consistently applied and practiced, and requires a Planning Agreement to deliver the requirements of the policy, it has been common place for these requirements not to be identified until the later stages of the development assessment process. This places significant pressure on the negotiation process with unrealistic expectations of all parties. Planning Agreements require a separate formal process of negotiation, notification, Council resolution and Execution; all before the DA can be determined, in some cases this can add months or years to the determination time of applications that have no other issues preventing the application from being determined.

In light of this review, the following are key features of the policy:

- Currently, maintenance contributions are calculated based on a flat annualised rate for a standard "lot size" detention basin. While this may cover that development scenario, it does not sufficiently calculate the maintenance costs of any other solution. It is therefore proposed that maintenance costs be calculated based on the actual asset being delivered. Benchmark rates are proposed to be exhibited as part of this review. This is particularly important to ensure that Council's adopted Water Sensitive Urban Design Policy is implemented and the outcome is maintained to the acceptable standards required.
- This review will also clarify Council's position on "Environmental Land". Principally and ideologically, environmental land should in the first instance, be held, maintained and kept by the NSW State Government. Council has only agreed to one (to date), 7ha parcel of land (to be dedicated after the first five years of establishment maintenance has been satisfactorily completed), which creates a physical link between passive recreation area and a district sports field with safe physical access on the edge. In this case, a Bio-Banking Agreement had been executed prior to the Planning Agreement with Council and all funds were paid into the Biodiversity Stewardship Fund. Where, in Council's ultimate discretion, there is demonstrated strategic merit in the land being owned by Council and all of the above matters are fully achieved, Council may consider dedication.
- It should be noted, that the NSW Productivity Commissioner's *Review of Infrastructure Contributions in New South Wales (December 2020)*, proposes the NSW Government introduce a Strategic Biodiversity Fund that would see land dedicated to and maintained by the NSW Government. This is ultimately the most appropriate response.
- The Maintenance of Asset Protection Zones (APZs) in new urban development by Council is not normally factored into planning. Keeping them as 'managed land' places a resourcing, management and financial burden on Council and community to benefit private development. In situations where merit can be established, contributions towards maintenance would be required to ensure that existing community members do not foot the bill for maintenance for the benefit of developers.

## **Works-in-Kind Policy**

The structure of Wollondilly Contributions Plan 2020 contains provisions for infrastructure to be delivered by Works-in-Kind Agreement (WIKA). A WIKA can only be entered into for an item (or items) in the Local Contributions Plan and that has development consent (but not a CDC) under the Act. Rules and legislative framework for Works-in-Kind Agreement (WIKA) is provided under section 7.11 of the *Environmental Planning and Assessment Act 1979* (The Act). This Policy is required to authorise the delivery method to occur, and the following is a high level overview of the Policy:

- WIKAs have been recommended as part of the Productivity Commissioners review into Development Contributions (December 2020) to deliver developer-led local infrastructure in a more timely and efficient manner. The benefit is that WIKAs have potential to deliver local infrastructure more quickly and with less administrative burden while maintaining the same standard of work identified in the Contributions Plan.
- Supervision of works occurs under the existing approvals with the certification systems that occur with existing developments. The value of works must accord with the Contributions Plan and agreement deeds being in standard form.
- There is no notification of a WIKA, as the works must correspond to those already adopted by Council in the Local Contributions Plan and has been assessed and approved as part of a Development Application.
- As with planning agreements, fees are payable in accordance with Council's Adopted Fees and Charges.

## **Draft Templates**

Draft templates are provided as attachments to this report for Council endorsement. These templates set the clear legal and policy framework that we expect developers to follow and form as a centrepiece to the policy review.

## **Consultation**

Each of these policies is required to be exhibited for a period of 28 days with a further 14 days for submissions in accordance with the *Local Government Act 1993*. The outcomes of the exhibition will be reported back to Council.

## **Financial Implications**

The policy work has been carried out with the existing operational budget. No funding has been allocated for this project and all work needs to be conducted internally. Fees and Charges for each policy are set in the forward budget and will support the operation of these Policies.

## **ATTACHMENTS**

1. **Draft Works in Kind Policy - New Template**
2. **Draft Planning Agreements Policy**
3. **Draft Dedication of Land Policy**
4. **Letter of Offer Template**
5. **Draft Planning Agreement Template**
6. **Review of Stormwater Contribution Rates**