

PURPOSE OF THIS POLICY

- This policy sets out the processes for entering into a Works-in-Kind Agreement (WIKa) with Council.

Always read this policy in conjunction with the Related Procedures identified below.

Policy Statement	To ensure the timely delivery of developer-led infrastructure identified in Council's Local Infrastructure Contributions Plan.
Scope	This policy applies to material public benefit identified under a local infrastructure contributions plan and offer to Council in kind.
Related Procedures	<ul style="list-style-type: none"> • <i>Nil</i>
Related Documents	<ul style="list-style-type: none"> • <i>Wollondilly 2040 – Local Strategic Planning Statement</i> • <i>Integrated Planning and Reporting (IP&R) framework</i> • <i>Wollondilly Local Infrastructure Contributions Plan</i>
Compliance Requirements	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> • <i>Environmental Planning & Assessment Act 1979</i>
Policy Owner	<i>Manager Sustainable Growth</i>
Adoption Date	
Next Review Date	<i>Every 3 years unless legislative requirement differs</i>

1. PRINCIPLES

- 1.1 Achieve the objectives, priorities and directions of the Wollondilly Local Strategic Planning Statement (LSPS), and Integrated Planning and Reporting (IP&R) framework.
- 1.2 Provide certainty for Council, Developers and the community.
- 1.3 Ensure quality and timely delivery of developer-led local infrastructure

2. ROLES AND RESPONSIBILITIES

Role	Responsibility
COUNCILLORS	<ul style="list-style-type: none">Ensure policy objectives align with priorities and other actions they exercise on behalf of the community
CEO	<ul style="list-style-type: none">Ensure that staff, contractors and consultants undertake required duties in accordance with this policy
DIRECTORS & MANAGERS	<ul style="list-style-type: none">Ensure that this policy is adhered to and that sufficient resources are provided for the implementation of the policy
STAFF, CONTRACTORS & CONSULTANTS	<ul style="list-style-type: none">Perform required duties in accordance with the policy

3. MATTERS FOR CONSIDERATION

What are Works in Kind Agreements (WIKAs)

The Environmental Planning and Assessment Act 1979 (EP&A Act) allows Council to accept the provision a 'material public benefit' in satisfaction of a condition for other than a dedication of land or a payment of monetary contribution.

Works-in-Kind Agreements (WIKAs) is the mechanism used to implement this. Developers may seek to provide public infrastructure and amenities identified in the Local Infrastructure Contributions Plan in lieu of monetary contributions as part of their Development Consent.

Council reserves its discretion to decide whether or not to enter into a Works-in-Kind Agreement with the Developer.

Council has resolved pursuant to s55(3)(i) of the Local Government Act 1993 not to invite tenders in respect of any planning agreement because of the unavailability in every case of competitive tenders meaning that a satisfactory result cannot and would not be achieved by inviting tenders.

Works-in-Kind Agreements will not be publicly notified.

What Items can be considered under WIKAs

For an item to be considered with a WIKAs, the provision being offered must be:

- Identified in the Wollondilly Contributions Plan Works Schedule
- Complying with Council's Development standards, control and/ or specifications and other appropriate Australian Standards
- Consistent with Council priorities in Wollondilly 2040 - Local Strategic Planning Statement, Integrated Planning and Reporting (IP&R) framework and Wollondilly Local Infrastructure Contributions Plan

Preliminary Proposal

Council preference is Section 7.11 Contributions will be made for off-site items identified in the Local Infrastructure Contributions Plan.

Preparation of a WIKA will commence in conjunction with the Development Assessment process. Ensure that the intention to enter into a WIKA is nominated within the associated Statement of Environmental Effects (SEE) for the development, or as a Formal Letter of Offer, in a form set out on the website.

Valuation of works-in-Kind

The value of works and/or land offered as 'works-in-kind' is the Attributable Cost (or a proportion of the Attributable Cost if the offer involves providing only part of a work) indexed in accordance with the provisions of the Contributions Plan. Value or pro-rata rates not exceeding the capped value of the Contributions Plan.

Security

The Council will not release the Subdivision Certificate until obligations under the WIKA have been complied with.

Obligations that cannot be secured by a Subdivision Certificate, the Developer must submit to Council an unconditional (without termination) bank guarantee of 200% of the total value of the WIKA item plus indexation reviewed annually (accordance with the provisions of the Contributions Plan).

Council will only release the security once secured items in the WIKA have been completed.

Surplus Value

Section 7.11 Contributions for off-site items identified in the Local Infrastructure Contributions will be Plan are excluded from this section.

There will be instances where a developer has provided a works-in-kind item surplus of the value identified in the Contributions Plan. An agreement that results in a surplus value will be considered at Council's discretion.

Council will hold the 'surplus value' (being the difference between the Attributable Cost of Works provided under the WIKA and the development contribution obligation) as a 'surplus value' in favour of the applicant. Deed

Council will apply this surplus to future development contribution requirements provided this agreement is in writing (WIKA or VPA) and that the development is within the same 'Area' identified in the Contributions Plan for the development.

The Developer should not expect a 'settle-up' payment from Council until after all contributions have been received from all developers and that surplus funds are held by Council.

Third Party Transfer of WIKA Surplus Value

A Developer may have 'surplus value' but no other development to undertake in the 'Area'. In this case, the Developer may seek Council's approval to transfer WIKA credits to a third party developer. Council will only consider the transfer to a third-party, where the request is made in writing by both developers, infrastructure items have been identified in the Local Infrastructure Contributions Plan, the receiving development has consent, the development is in same 'Area' as the original development, and the receiving development is otherwise consistent with this Policy.

Cost of Preparation

The Developer will pay for the WIKA, in accordance with Council's adopted fees and charges.

Cost of Agreement Management and Administration

The Developer is responsible for the remuneration of all costs involved in management and administration of the WIKA. This will be in accordance with Council's adopted fees and charges.

Execution of Agreement

The WIKA may only be executed after the release of the Development Consent. The WIKA Deed will be electronically signed by the Developer, the Landowner (if different) and forwarded electronically to Council. The Deed will be signed and dated by Team Leader Contributions Planning (as Council Delegate). An electronic copy will be sent to all signed parties and placed on Council's Website.

Any intent to alter the key components of the WIKA Template will not be accepted. Should any disagreement between the terms of the Deed arise, Council will default contributions obligations back into the ordinary S7.11 Monetary Contribution.

Implementation

The Developer is to give Council written notice of the anticipated practical completion of construction. The developer must also provide Council with an 'Executed Works' plan to allow Council officers to undertake final inspection as part of Development Consent conditions.

Constructed works must be built to the satisfaction of Council's Infrastructure Branch, and aligned with the agreed design specification. Council will issue a signed 'Notice of Practical Completion' following final inspection. Works will be deemed 'complete' when the Developer has received this 'Notice of Practical Completion' from Council.