



THE HILLS WORKS-IN-KIND POLICY

Policy 28/2021-2024

DATE

Ordinary Meeting of Council 26 September 2023

POLICY NO:	28/2021-2024
LEGISLATIVE REQUIREMENTS	<i>Environmental Planning and Assessment Act 1979 (NSW) and Environmental Planning and Assessment Regulation 2021 (NSW).</i>
RESPONSIBILITY:	FORWARD PLANNING
OBJECTIVE:	To provide guidance and establish criteria by which Developers may make an application to enter into a Works-in-Kind Agreement with Council for the construction or provision of public amenities and/or public services, and / or the dedication of land identified in a works schedule in a Contributions Plan that applies to the site of the development, in part or full satisfaction of a Section 7.11 condition imposed under the EP&A Act.
REVIEW:	Within the first 12 months of each term of Council or as required.

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1. INTRODUCTION

1.1. Name of this Policy

This policy is known as The Hills Shire Council Works-in-Kind Policy (“Policy”).

1.2. Application of the Policy and commencement

This Policy applies to Works-in-Kind (WIK) Agreements and reimbursements, including applications to Council to enter into a WIK Agreement or seek reimbursement of developer contributions. This Policy was endorsed by resolution of Council on 26 September 2023.

1.3. What is a Works-in-Kind Agreement

New urban development creates the need for additional public amenities and public services. The *Environmental Planning and Assessment Act 1979 (EP&A Act)* empowers Council to require new urban development to contribute towards the provision of these public services and amenities. Council’s Contributions Plans provide information on:

- (1) the extent of anticipated development
- (2) public services and amenities needed to support new development; and
- (3) the contributions that new development must make to fund the provision of these services and amenities.

Where a Developer would like to undertake works that are identified in a Contributions Plan in either full or partial satisfaction of development contributions required by a condition of a Development Consent, the Developer will:

- (1) require written agreement from Council that it will accept the provision of the ‘Works-in-Kind’; and
- (2) specify the extent to which the provision of the material public benefit satisfies the development contributions required.

Such an agreement is known as a ‘Works-in-Kind’ Agreement which is a legal contract entered into by both Council and a Developer. The decision to enter into a WIK Agreement is at the sole discretion of Council (see Part 5.4 of this Policy).

1.4. Objectives of this Policy

The purpose of this policy is to provide a fair, transparent and standard procedure and framework for the making and assessment of an offer to enter into a WIK Agreement.

This document provides an overview of the legal requirements of WIK Agreements under the applicable legislation as well as the approval process for WIK Agreements internally within Council.

Further, the Policy seeks to ensure that a fair, transparent, efficient and accountable framework governs the use of WIK Agreements to facilitate the provision of public facilities, services and amenity outcomes in satisfaction of requirements to pay development contributions in accordance with the provisions of the EP&A Act and that align with, or are consistent with Council’s corporate and strategic planning context, including Council’s Development Contribution Plans.

1.5. Legislative context

Section 7.11 of the EP&A Act provides that where 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 amenities and services within an area, the consent

authority may grant Development Consent subject to conditions which require the dedication of land free of cost, the payment of a monetary contribution, or both. In order to require such a contribution, Council must have a Contributions Plan in place which authorises the imposition of any such condition of consent.

In accordance with Section 7.11(5) (b) of the EP&A Act, a consent authority may accept the provision of a material public benefit (other than the dedication of land or payment of monetary contributions) in full or partial satisfaction of the condition imposed which requires contribution towards the provision of public services and amenities. This material public benefit is most commonly the construction of works which have been identified in the relevant Contributions Plan.

This Policy is to be read in conjunction with the current version of the Contributions Plan that applies to a site.

Provisions of the following legislation and instruments will be relevant when considering whether to enter into a WIK Agreement:

- a. The EP&A Act.
- b. The EP&A Regulation.
- c. The *Local Government Act 1993* (NSW).
- d. The current Local Environmental Plan or State Environmental Planning Policy that applies to the site of the Development or Works.
- e. Any Development Control Plan that applies to the site of the Development.
- f. any applicable Contributions Plan or draft Contributions Plan; and
- g. this policy,

(each as amended from time to time).

1.6. When is a Works-in-Kind Agreement Not Appropriate?

a. Public Benefits not identified within a Contributions Plan

The undertaking of a work or provision of a facility that is not specifically included within a Contributions Plan (or is not identified within the specific Contributions Plan applicable to a particular development) will not be accepted as 'Works-in-Kind'. In those circumstances, an offer to enter into a planning agreement should be submitted in accordance with Council's Planning Agreement Policy.

b. Dedication of Land

Council will generally not accept the dedication of land (identified for public purposes) to offset a required monetary contribution, and instead the Developer will be required to pay the full contribution relating to land acquisition. The value of land can then be negotiated separately between the applicant and Council, and a value formally agreed upon prior to payment.

An appropriate condition may be included in any Development Consent applying to land identified for public purposes to ensure that the land is transferred to Council. These consents would require satisfactory arrangements being made with Council's Manager – Special Property Projects.

c. *Reimbursement Claim (outside of a Works-in-Kind Agreement)*

It should be noted that a WIK Agreement differs from a 'reimbursement claim' for works completed by a Developer on behalf of Council. A 'reimbursement claim' occurs when a Developer pays the full monetary contributions imposed as a condition of Development Consent and then separately seeks to claim reimbursement for works completed as part of the development which are also identified within a Contributions Plan.

Any claim for reimbursement with respect to works (as opposed to requests to enter into a WIK Agreement to offset or reduce the contributions payable) should be submitted to the relevant Council Manager or Managers (i.e. Infrastructure and Transport or Asset Management, Traffic & Parks). Further guidance with respect to 'reimbursement claims' is provided in Part 7 of this Policy.

It is critical to note that Developers will not be entitled to any reimbursement for works completed unless formal agreement has been reached with Council prior to commencement of the works.

1.7. Policy not binding

This policy is not legally binding and Council is not bound to strictly apply this policy for every WIK agreement entered into by Council. However, Council will generally seek to apply this policy, as far as reasonably practicable, in relation to WIK agreements (including their negotiation).

2. TERMS AND DEFINITIONS

The following detailed terms used in this Policy have the meanings described to them below.

Community infrastructure	means public amenities and public services.
Contributions Plan	means a public document prepared and adopted by Council under to Section 7.11 and/or Section 7.12 of the EP&A Act.
Council	means the Hills Shire Council.
Developer	is a person or party who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person or party.
Development	has the same meaning as the EP&A Act, being the following (except where specifically excluded by the EP&A Regulations): (a) The use of land. (b) The subdivision of land. (c) The erection of a building. (d) The carrying out of a work. (e) The demolition of a building or work. (f) Any other act, matter or thing that may be controlled by an environmental planning instrument.
Development Application	has the same meaning as the EP&A Act, being an application for consent under Part 4 of the EP&A Act to

	carry out development but does not include an application for a complying development certificate.
Development consent	has the same meaning as the EP&A Act, being consent under Part 4 of the EP&A Act to carry out development and includes, unless expressly excluded, a complying development certificate.
Development contribution	means the payment of a monetary contribution, the dedication of land, the provision of a material public benefit (the carrying out of Works-in-Kind) or any combination of these.
DPE	Department of Planning and Environment.
EP&A Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
EP&A Regulation	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Instrument change	means a change to an environmental planning instrument.
LEP	Local Environmental Plan.
Material Public Benefit	has the same meaning as Works-in-Kind.
Planning Benefit	A Development Contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community.
Provision of public infrastructure	includes: <ul style="list-style-type: none"> • the provision, extension and augmentation of (or the recoupment of the cost of providing, extending or augmenting) public infrastructure, and • the funding of recurrent expenditure relating to the provision, extension and augmentation of public infrastructure, and • the conservation or enhancement of the natural environment, and • any action of a planning authority in connection with the exercise of any statutory function under this Act, including the carrying out of any research or investigation and the preparation of any report, study or instrument.
Public benefit	is the benefit enjoyed by the public as a consequence of a development contribution.
Public infrastructure	includes facilities and services (capital and land) that support the population within a given area, including but not limited to open space, community facilities, drainage and road works.
Regional infrastructure contributions (Special Infrastructure Contributions and/or Housing and Productivity Contributions)	means any contribution so directed by the Minister under Section 7.24 of the EP&A Act.

Unclaimed Value means the value of any approved Works-in-Kind in excess of the contributions required for the relevant infrastructure category as a condition of development consent.

Works-in-Kind means the whole or part undertaking of a work or provision of a facility, public amenity or service and/or embellishment of land that is specifically included within a works schedule in a Contributions Plan, in lieu of the part or full payment of either a monetary contribution or the dedication of land that is required as a condition of development consent.

Note: Unless otherwise specified, this Policy adopts the terms and definitions as used in the EP&A Act and EP&A Regulation (if applicable).

3. ASSESSMENT CRITERIA FOR WORKS-IN-KIND APPLICATIONS

In considering an application for Works-in-Kind, Council will have regard to the requirements of any current Legislation, Practice Notes or other relevant Government guidelines and may consider matters such as, but not limited to the following:

- a. Whether Council has received sufficient detail from the Developer (to Council's satisfaction) in relation to the Developer's application to provide works-in-kind (including the scope of any embellishments) to allow Council to adequately assess the Developer's application.
- b. Whether the proposed work-in-kind will be to a suitable standard for Council to eventually accept.
- c. The benefits of the works (and timing of provision) to the community.
- d. The overall benefit of the works to the current and future development in the area.
- e. Finalisation of, or consistency with, the detailed design of the facilities.
- f. The submission of plans and cost estimates to Council of the proposed works to be undertaken by the Developer.
- g. Whether the location, siting and design of the proposed works has regard to the applicable Development Control Plan and Contributions Plan.
- h. The monetary value of the proposed works-in-kind and the amount of offset sought by the Developer.
- i. Council's capacity to deliver the works and whether this would provide better value for money.
- j. The timing of completion and future recurrent costs including staffing and maintenance and future management (particularly if work is to a higher standard than proposed under the applicable Contributions Plan).
- k. Council may consider works to a higher standard than the Contributions Plan allowance, however no reimbursement of additional costs will be provided.

- l. The financial implications for cash flow and whether the proposed works pre-empt the future orderly implementation of the works as identified in the works schedule.
- m. The impact of committing funding to the project or the funding of other works in either Council's Shire Management Plan, 10 Year Works Program or any other strategic plan.
- n. If the provision of the works is likely to prejudice the timing or the manner of the provision of public facilities included in Council's works program.
- o. Council's priorities for infrastructure delivery.
- p. Future dedication, handover and management arrangements.

The acceptance of an offer for a Works-in-Kind is at the sole discretion of Council.

4. OFFSETTING WORKS-IN-KIND AGAINST CONTRIBUTIONS PAYABLE

The purpose of a Works-in-Kind Agreement is to offset the monetary contribution or land dedication required to be provided by the Developer under a condition of Development Consent imposed under Section 7.11 of the Act. If the works proposed relate to a facility covered by a specific category Council will only offset the value of works-in-kind against the development contribution required for that particular category. For example, construction of a road (or part thereof) can only be offset against contributions required for the purposes of transport. The construction of a road could not be offset against contributions required for the purposes of open space or water management etc.

The value of any offset will be equivalent to the cost of the work, as determined to Council's satisfaction in reliance on a report from an independent quantity surveyor, up to the maximum value specified for the work within the Works Schedule to the relevant Contributions Plan. That is, the value of any offset for works will be capped at the estimated value specified for that same works item under the applicable Contributions Plan (even if the Developer is proposing to provide the works at a higher standard than that envisaged under the Contributions Plan).

There may be cases where the Developer proposes to carry out Works-in-Kind for works included in a Contributions Plan, but the cost of these works exceeds the amount of the monetary contribution required to be paid by the Developer as a condition of the Development Consent for the relevant infrastructure category (**Unclaimed Value**). In these situations, the Developer may be eligible to be reimbursed for the actual costs of the works if this has been approved by Council as being consistent with the Contributions Plan.

Where certain infrastructure provision or works would normally be required to be provided as part of a development by way of a condition of development consent, then these would be considered to be in addition to any Works-in-Kind contribution. No reduction in the Works-in-Kind contribution would be accepted in recognition of works required to be carried out in connection with the proposed development or already required via a condition of consent.

For accounting purposes, any offsets will be done in one of three (3) ways:

- a. Where the value of works undertaken is equal to the contribution required for the relevant infrastructure category as a condition of consent, Council will consider those works to be the equivalent of the payment of the contribution in that facility category in full.

- b. Where the value of the works undertaken is less than the contribution required for the relevant infrastructure category as a condition of consent the Developer will be required to pay the difference to Council as monetary contribution.
- c. Where the value of the works undertaken exceeds the value of the monetary contribution required for the relevant infrastructure category as a condition of consent, Council will consider those works to be equivalent of the payment of the contribution in that facility category.

To apply Works-in-kind credit for the aforementioned a, b, and c methods, the condition requiring the payment of the contributions needs to be modified. Therefore, an application to modify the consent by deletion or modification of the existing Section 7.11 condition of the consent would need to be made.

Works-in-kind credit cannot be applied once development contributions have been paid.

With respect to reimbursement of Unclaimed Value, the following should be noted:

- Developers should not expect reimbursement of Unclaimed Value in full. The possibility and level of reimbursement is limited to the funds collected from contributions received from other developers for those specific works pursuant to the relevant Contributions Plan and the possibility for funds to be distributed equitably to multiple developers as reimbursement of their respective Unclaimed Values.
- Council retains the right to repay Council's outstanding financial liabilities for local infrastructure projects forward funded by Council's Capital Works Program and invest funds collected from other developers to other local infrastructure projects, prior to reimbursing any Unclaimed Values to Developers.
- Indexation will not be applied to any Unclaimed Values.
- Payment of Unclaimed Value, and the terms of any such payment are at the sole discretion of Council.
- Developers are only entitled to re-imbusement of Unclaimed Value to the extent of re-imbusement included in a binding WIK Agreement entered into before the commencement of the relevant works.

5. PROCESS FOR WORKS-IN-KIND AGREEMENTS

5.1. Pre-Lodgement Discussions

At the pre-lodgement meeting for a Development Application, assessing officers will refer to the relevant Contributions Plan in order to identify works items in the vicinity of, or relating to, the development that qualify for and which may be carried out as Works-in-Kind. Developers should be made aware of opportunities to undertake Works-in-Kind by assessing officers at the pre-lodgement meeting.

5.2. Written Application

A WIK Agreement can be considered by Council either as part of a Development Application, or alternatively, as soon as practicable following the issue of Development Consent for the subject development.

To commence the process, the Developer must submit a formal written application to Council advising its desire to undertake Works-in-Kind, specifying the particular works identified in a Contributions Plan it proposes to provide and requesting approval to enter into a WIK Agreement.

A formal written application must satisfy the following criteria:

- a. It must be made in writing to the relevant Council Manager (i.e. Development Assessment or Subdivision and Development Certification).
- b. Provide legal description of the land on which any works are proposed to be carried out.
- c. If available, identify the Development Consent issued for the development with which the works are associated (consent number and date of consent) or alternatively, the identification number of any associated Development Application currently under assessment.
- d. Provide a detailed description of the works proposed to be undertaken (including concept/detailed design drawings and report/s).
- e. Provide details of which Contributions Plan works schedule in which the works are identified in.
- f. Detail whether the proposed works are intended to be completed in full, or only partially completed, relative to the specifications contained in the relevant Contributions Plan and any existing Development Consent/s for the works.
- g. Include an estimated value of the works with a sufficient level of detail to enable Council to verify the value of the works. The Developer must establish to the satisfaction of Council the value of the Works-in-Kind offered, including where required by a report from a qualified, practicing independent quantity surveyor with associate or higher membership of an accredited professional institution in Australia. Any variations, between the cost identified in the Contributions Plan and the estimated cost of works should be identified.
- h. Identify the differentiation of components of the works that are in accordance with the Contributions Plan and those that are not.
- i. Include a detailed timeframe for the design, construction and handover of the works.
- j. Include a summary table of the development contributions payable under the Development Consent and the extent the proposed WIK Agreement will offset these contributions.

A formal written application should be submitted by the Developer as early as possible in order to allow sufficient time for Council to assess the application without impacting on the Developer's development schedule. Delays in development are not a relevant factor for Council in considering any application for Works-in-Kind.

5.3. Council Assessment

The application will be considered by Council's internal 'Infrastructure Advisory Group', typically comprising Council's Group Manager – Strategic Planning, Chief Financial Officer, Manager – Forward Planning, Manager – Infrastructure and Transport and Manager – Special Property Projects. The Infrastructure Advisory Group will consider the application having regard to the matters detailed in Part 3 of this Policy.

Council may consult with other developer stakeholders who would be required to contribute to the works-in-kind, prior to assessing the application. Preliminary ('without prejudice') Acceptance.

Having regard to the recommendations of the Infrastructure Advisory Group, Council will advise the Developer on a without prejudice basis of whether or not the offer of Works-in-Kind is acceptable, in principle, subject to formal Council endorsement. The letter will include:

- a) the agreed value of the Works-in-Kind;
- b) the agreed timing of the works; and
- c) the next steps and any other considerations.

If deemed necessary, Council may request additional information in order to obtain evidence satisfactory to Council of the value of the works, including where appropriate a report by a qualified practicing quantity surveyor. Should additional information be required, the offer of Works-in-Kind would again be considered by the Infrastructure Advisory Group following the receipt of the additional information required.

5.4. Developer to Submit Draft Agreement

Upon receipt of the letter referred to in Section 5.3 confirming in principle acceptance, the Developer has 60 days from the date of the letter to enter into a WIK Agreement.

Where the Developer wishes to proceed with the proposed WIK Agreement, it should submit to Council a draft WIK Agreement based on Council's template WIK Agreement and having regard to any preliminary advice received from Council. The WIK agreement will include terms relating to the following (as a minimum):

- a) Design requirements and relevant standards for the works.
- b) Security bonds and defects liability periods.
- c) Insurance requirements.
- d) Indemnities provided by the Developer to Council.
- e) Inspections required.
- f) Work Health and Safety requirements.

5.5. Council to Review Draft Agreement

The draft WIK Agreement submitted by the Developer will then be reviewed by Council officers, including Council's legal advisor (where required), for consistency with any conditions of the preliminary acceptance and the requirements of this Policy. Any comments will be provided to the Developer in writing (which may include edits to the draft WIK Agreement).

Where more complex issues arise Council may engage the assistance of consultants including solicitors and engineers. Any costs incurred in engaging these consultants must be reimbursed to Council by the Developer as a condition of entry into the WIK Agreement.

The Developer must take into account any comments of Council officers and submit a revised draft WIK Agreement. Council officers and the Developer will negotiate in good faith to seek to agree the terms of the WIK Agreement.

The draft WIK Agreement will then be reported to Council for consideration. The decision to enter into a WIK Agreement is at the sole discretion of Council (irrespective of any preliminary advice or discussions with Council officers) and execution will only occur where Council has resolved to do so.

5.6. Securities

Council will require every WIK Agreement entered by it to contain appropriate security provisions which allow for the enforcement of the WIK Agreement by suitable means in the event of a breach of the WIK Agreement by the Developer.

Such provisions may include the following (by way of example):

- a) Requiring the works to be completed prior to the issue of a Subdivision Certificate for the Development.
- b) Requiring the Developer to lodge separate irrevocable and unconditional bank guarantees or bonds (Securities) as security for the performance of the obligations of the Developer under the WIK Agreement (including for any Defects Liability Period for the Works), at a value agreed between the parties. The cost of procuring Securities will be borne by the Developer.

If the Securities are included in the WIK Agreement, the Securities may be for:

- c) the agreed value of the works (Primary Security); and
- d) an additional amount to be held as security against defects for the relevant defects period specified in the WIK Agreement (Defects Security),

and must be provided to Council prior to execution of the WIK Agreement.

5.7. Insurances

The Developer must produce evidence of current policies of insurance relevant to the construction of the Works-in-Kind. The values of the policies will be determined having regard to the nature and extent of the Works-in-Kind and the risks inherent in carrying out the Works-In-Kind.

The policies of insurance required include:

- a) Public liability with \$20,000,000 minimum cover (or as otherwise required by Council taking into consideration the nature of the proposed work);
- b) Professional indemnity;
- c) Workers compensation;
- d) Insurance of the works; and
- e) Motor vehicle insurance.

Any insurance to be effected by the developer is to be in the joint names of the Developer and Council and include a cross liability clause.

5.8. Execution

Where Council has resolved to enter into a WIK Agreement, the Developer must execute the WIK Agreement (in duplicate) and submit this to Council for execution together with any other documents as may be required including:

- a) any of the Securities above;
- b) any certificates of currency for the Insurances above; and
- c) construction plans for the Works-in-Kind.

5.9. Approval for Works and Access to Land

Where the Works-in-Kind have not yet been approved, the Developer must lodge a Development Application for the works and obtain the relevant Development Consent and

construction certificate, at its cost, prior to commencement of the works. It is the responsibility of the Developer to ensure that it has all necessary consents to undertake the Works-in-Kind.

It is important for the Developer to understand that Council entering into a WIK Agreement does not imply that Development Consent for the subject work has, or will be given. The standard development assessment process under the Act will apply.

Where the Works-in-Kind are to be undertaken on land not owned by the Developer, the Developer is responsible for making appropriate arrangements with the landowner. Where works are undertaken on the road reserve, consent from Council will be required under Section 138 of the *Roads Act 1993* (NSW) and where works are undertaken on other land owned by Council, an access licence may be required.

5.10. Documentation of Offsets

a. Where Offer is made as part of a Development Application

Where the provision of the Works-in-Kind is negotiated and agreed (and a WIK Agreement is executed by both parties) as part of the Development Application process, the agreed works will be set out in the Development Consent as a condition and the development contributions will be adjusted (or deleted if necessary) to reflect the agreed offset as per the executed WIK Agreement.

b. Where Offer is made following issue of Development Consent

Where the provision of Works-in-Kind is negotiated and agreed (and a WIK Agreement is executed by both parties) following the granting of Development Consent, any existing conditions requiring the payment of the full contributions under the applicable Contributions Plan must be modified. The applicant is to submit a modification application requesting modification of existing development contribution conditions to recognise monetary value of the executed Works-In-Kind agreement.

In such instances, the actual payment required to be made to Council will be calculated by deducting the offset amount as per the executed WIK Agreement from the contribution amount payable under the conditions of the Development Consent.

c. Where Offer is made following issue of Development Consent and Payment of Contributions

It is critical to note that offsets and credits for Works-in-Kind cannot be applied once development contributions have been paid. Council will not refund development contributions which have already been paid by the Developer in association with the development in recognition of Works-in-Kind.

5.11. Commencement of Works

Subject to the Developer obtaining the necessary consents and licences, including a Construction Certificate, for the Works-in-Kind, the Developer must promptly commence and undertake the works in a proper and efficient manner.

Offsets or credits for Works-in-Kind will only be granted where a WIK Agreement has been executed by both parties prior to the commencement of the works. Council will not, under any circumstances, retrospectively reimburse a Developer for any works completed, unless a formal WIK Agreement has been executed by both parties prior to the commencement of the subject works.

5.12. Variations of Work

Once Council has agreed to the specific works identified in a WIK Agreement, no additions or alterations, including variations to costs should be made to these works without the prior written consent of Council. Unless approved by Council no credits will be recognised for works carried out by the Developer which exceed the approved contribution.

5.13. Inspection by Council

As Council will ultimately be responsible for the Works-in-Kind and the future maintenance of those works, the works will be inspected by Council's representative as they progress to ensure that they are being completed to the standard specified in the WIK Agreement. The proposed timing of these inspections will be identified in the WIK Agreement.

It is important for the Developer to understand that these inspections are separate and distinct from any inspections by Council in its capacity as a consent authority.

The developer is to allow for Council's representative unhindered access to the entire works site.

To facilitate the identification of faults and discussion on rectification options, a representative of the Developer is to accompany Council's representative during the entire duration of the works inspection.

5.14. Dedication of Works-in-Kind

Upon completion of the works identified in the WIK Agreement, Council will inspect the works and identify any faults to assess the acceptability of the Works-in-Kind. The Developer will be notified of the outcome of the inspection in writing.

If incomplete works or defective works are identified, the developer will be required to complete the works to Council's satisfaction in accordance with the specifications, the design documents and the WIK agreement. If the works can be accepted by Council, it will issue a Certificate of Practical Completion to the Developer.

Upon rectification of any faults identified, Council will accept dedication of the Works-in-Kind. The Developer must dedicate the works (including by providing Council copies of the works-as-executed drawings) to Council within a timeframe which is acceptable to Council.

The Developer is required to meet all costs associated with the dedication of the Works-in-Kind.

6. OTHER MATTERS

a. *Ownership of works provided by Works-in-Kind Agreements*

Works become the property of Council when they are 'handed over'/dedicated to Council in accordance with, and subject to, the terms of the relevant WIK Agreement. The WIK Agreement will specify a 'hand over date'.

No Credit will be provided for the works until they have been handed over to Council or in the case of works to be completed after a Subdivision Certificate has been issued, appropriate security has been provided for those Works. Where the works are located on land not owned by Council, the 'hand over' of the works will not be accepted until Council owns the land on which the works are located.

When the work undertaken by the Developer includes the 'design' of an item of infrastructure, the design work will become the intellectual property of Council. All plans and related documentation must be provided to Council for credit to be acknowledged for the work.

b. *Standard Template Works-in-Kind Agreement*

Council has invested its resources in preparing a standard WIK Agreement template. This is to be the standard agreement to be used for WIK Agreements. Variations to the WIK Agreement template will only be made at Council's absolute discretion.

c. *Payment of Council's Costs*

The Developer is expected to pay Council's costs that are incidental to negotiating, preparing, entering and enforcing the WIK Agreement, including those related to the engagement of external consultants or quantity surveyors and any or legal costs (including where variation to the standard template WIK Agreement is required).

d. *Financial Risk and Liability*

Council does not accept any financial risk associated with the construction of the works and will only cover those attributable costs agreed to in the WIK Agreement entered by the Developer. Any costs beyond this will be borne by the Developer.

Council does not accept any liability for costs associated with altering the design, approval or construction of works if the applicant has received Development Consent for the works prior to execution of a WIK Agreement.

e. *Requirements for Tendering*

Where the value of works to be provided through a WIK Agreement exceeds \$270,000, or the amount otherwise specified in Section 55 of the *Local Government Act 1993* (NSW), the Developer will be required to either:

- submit a brief to enable Council to tender for the works; or
- justify in accordance with Section 55(3) of the *Local Government Act* why Council should resolve not to require a public tender process.

Upon considering this request, Council may resolve not to tender in accordance Section 55(3) of the *Local Government Act 1993* (NSW), but will still have an obligation to ensure the WIK Agreement provides good value for money.

7. REIMBURSEMENT CLAIMS

A 'reimbursement claim' occurs when a Developer completes works which are identified within a Contributions Plan as part of a development, accepts and pays the full monetary contributions required to be paid as condition of consent under Section 7.11 or Section 7.12 of the Act and then separately seeks reimbursement for the value of the works completed as part of the development. This differs from a WIK Agreement as the developer pays the full contribution, rather than seeking to use the value of the Works-in-Kind to offset or reduce the contributions payable.

While 'reimbursement claims' are not technically WIK Agreements, the process and considerations for each are similar. The process for 'reimbursement claims' is as follows:

- **Pre-lodgement discussions:** At the pre-lodgement meeting for a Development Application, assessing officers will refer to the relevant Contributions Plan to identify works items in the vicinity of, or relating to the development which may be carried out by the Developer.
- **Approval for the works:** The Developer receives Development Consent for the proposed works.
- **Written Application:** The Developer writes to the Council Manager advising of their intent to pay the contributions required under the Development Consent in full and subsequently seek reimbursement for works to be completed as part of the development which are also identified for provision within a Contributions Plan. The written application must satisfy the criteria specified in Part 5.2 a) to i) of this Policy.
- **Council Assessment:** The written application will be considered by Council's internal 'Infrastructure Advisory Group' comprising Council's Group Manager – Strategic Planning, Chief Financial Officer, Manager – Forward Planning, Manager – Infrastructure and Transport, and Manager – Special Property Projects. The Infrastructure Advisory Group will consider the application having regard to the matters detailed in Part 3 of this Policy.
- **Preliminary Acceptance:** Having regard to the recommendations of the Group Council will advise the developer on a without prejudice basis of whether the 'reimbursement claim' is supported, in principle, subject to formal Council endorsement. The letter will include the agreed value of the reimbursement, the agreed timing of the works and the next steps and any other considerations. If deemed necessary, Council may request additional information to obtain evidence satisfactory to Council of the value of the works, including where appropriate a report by a qualified practicing quantity surveyor.
- **Council Consideration of Reimbursement:** Any reimbursement claim must be ratified by Council by way of budget approval and endorsement of the associated expenditure and any budget variations (if required).

It is critical to note that Developers will not be entitled to any reimbursement for works completed unless 'preliminary acceptance' has been provided as above and the expenditure has been endorsed by Council prior to commencement of the works.