

Planning Agreement / Works In Kind Agreement Frequently Asked Questions

Planning Agreements and Works in Kind Agreements (WIKAs) can help developers satisfy requirements for development contributions and provide opportunities to deliver community infrastructure earlier than Council may otherwise be able to achieve.

This facts sheet provides an overview of some key differences between the two agreements and the circumstances in which each agreement might be used.

How do planning agreements and WIKAs fit into the planning and development contributions system? ↓

Part 7 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) enables Council, other consent authorities and accredited certifiers, via the [Shoalhaven Contributions Plan 2019](#), to levy development contributions for the provision of community infrastructure generated as a consequence of that development.

Section 7.11 development contributions apply to the whole of the Shoalhaven Local Government Area and may be imposed as a condition of consent for a number of development types, including (not exclusively) subdivisions, residential, commercial, retail and industrial development applications and complying development certificates.

The EP&A Act provides that development contribution requirements may be satisfied by a planning agreement (Section 7.4) or a WIKAs (Section 7.11(5)(b)).

What type of agreement should be used? ↓

Regardless of which mechanism is utilised, early consultation with Council is always recommended.

Whilst in many circumstances either mechanism could be utilised, a single agreement is always beneficial for both parties, with regard to cost and time.

Acceptance of any such agreement is at the sole discretion of Council.

Planning Agreements:

Where matters are complex or land dedication is involved, a planning agreement is generally the best mechanism. Planning agreements are generally conditioned as part of a development consent, therefore early consultation with Council is essential to ensure that negotiations are undertaken prior to or in conjunction with discussions associated with a development application (DA).

Works-in-kind Agreements (WIKAs):

Where an applicant intends to construct or complete part or all of the works identified in a contributions project that does not involve land dedication, a WIKAs is generally the best mechanism.

Where infrastructure is provided on land which will **not** be dedicated to Council, a restriction on use, easement, covenant or other encumbrance is to be placed on the title to the satisfaction of Council. In the case that development consent has already been granted and a developer decides that they want to dedicate land, a separate

agreement will need to be negotiated with Council's Property Unit.
What happens if the cost of work is greater than the contributions levied on the development consent? ↓
This is considered on merit and is at the discretion of Council. Please contact Council for further information.
Does a planning agreement or WIKA alleviate the need to pay all other s7.11 development contributions? ↓
<p>No. Planning agreements and WIKAs are generally entered into in relation to single (or a small number of) contributions projects that relate to the infrastructure or other public benefit proposed in the agreement. However, there may be a range of contributions projects that make up the total development contributions levied on a development consent.</p> <p>Council is generally not supportive of pooling all the contributions levied as an offset to the works.</p>

Planning Agreements

What is a planning agreement? ↓

A planning agreement, often referred to as a voluntary planning agreement or VPA, is a voluntary agreement entered into between one or more planning authorities and a developer/s, where the developer seeks to change an environmental planning instrument (i.e. by way of a planning proposal), or has made, or proposes to make, a development application (DA) or application for a complying development certificate (CDC), under which the developer is required to provide the following to be used for or applied towards a public purpose:

- Dedication of land
- A monetary contribution
- Material public benefit
- A combination of some or all of the above.

Under a planning agreement, a developer may agree to provide or fund public amenities and public services, affordable housing and transport or other infrastructure.

What legislative mechanisms enable a planning agreement? ↓

The legislative framework relating to the preparation of planning agreements is prescribed by:

- Part 7, Subdivision 2 of the *Environmental Planning & Assessment Act 1979* (EP&A Act); and
- Part 9, Division 1 of the *Environmental Planning & Assessment Regulation 2021* (EP&A Regulations)

When is a planning agreement not appropriate? ↓

Planning agreements can be used where there is a clear public benefit for a public purpose. Where this is not the case, a planning agreement is not appropriate. For example, if the infrastructure proposed is identified in a contributions plan but the benefits of that infrastructure flow primarily to private landowners, then it may be more appropriate to consider a WIKA.

A planning agreement cannot be entered into in relation to a development if a development consent has already been issued and the consent does not include a VPA related condition.

Planning agreement negotiations need to be undertaken prior to or in conjunction with discussions associated with a development application (DA).

What land is considered appropriate to dedicate to Council under a planning agreement? ↓

Land may be dedicated via a planning agreement, in the following circumstances:

- Where land dedication is specified in a contributions plan.
- Where a developer proposes to dedicate land to Council, free of cost and to be used or applied towards a public purpose. Acceptance of the land is at the absolute discretion of Council.

Planning agreements may specify any works required prior to the handover of land and the ongoing management or maintenance of the land. A separate implementation agreement may be required.

For more information relating to the dedication of land, see section 11 of the planning agreement template attached to [Council's policy](#).

Examples of instances where a planning agreement has been utilised to provide a public benefit ↓

A developer is seeking consent for a staged residential subdivision that will create 26 residential lots and one open space lot. The developer wishes to enter into negotiations with Council to dedicate the open space lot to Council for passive open space, as the land has significant biodiversity values. As the development consent has not yet been granted, Council is able to enter into negotiations with the developer to discuss the details and appropriateness of the planning agreement, including the potential benefit for the wider community, and the requirements of both parties.

Works-in-kind Agreements (WIKAs)

What is a WIKA? ↓

A WIKA is a formal agreement between Council and a developer relating to the construction or provision of the whole or part of an infrastructure item that is identified in the Shoalhaven Contributions Plan 2019. A WIKA can be utilised in lieu of paying related s7.11 development contributions.

A WIKA does not need to be conditioned as part of a development consent, like a planning agreement. However, to avoid delays and to allow sufficient time for the WIKA application to be considered, the application should be submitted to Council as soon as practicable following the issue of the development consent.

What legislative mechanism enables a WIKA? ↓

Section 7.11(5)(b) of the *Environmental Planning & Assessment Act 1979* provides that development contribution requirements may be satisfied by the provision of works in kind or other material public benefits (other than the dedication of land or payment of monetary contributions).

When is a WIKA not appropriate? ↓

A WIKA is not appropriate where a development proposal involves the isolated

dedication of land, or the construction of infrastructure or provision of other public benefits not associated with a contributions project. In these instances, a planning agreement should be entered into or negotiated prior to the development consent being issued.

Examples of instances where a WIKA has been utilised to provide a public benefit ↓

Example 1: A developer has received development consent for a three-storey shop-top housing development. The consent outlines a number of applicable Section 7.11 development contributions, including contributions towards the development of a service road. The developer wishes to enter into a WIKA with Council to develop the road in lieu of paying monetary contributions towards the related road project.

Example 2: A developer has received development consent for a 200 lot residential subdivision. The consent outlines the applicable section 7.11 development contributions, including contributions towards open space. The developer wishes to enter into a WIKA with Council to embellish certain land with playground equipment in lieu of paying part of the monetary contributions towards the open space project.

Further information about the planning agreement and WIKA processes ↓

If you are considering entering into a planning agreement or WIKA with Council, please first read Council's relevant policies:

- [Planning Agreement Policy](#)
- [Works-in-kind Agreement Policy](#)

If you need further information or wish to clarify the content of these policies, please contact Shoalhaven City Council's Strategic Planning Section.

Further information about planning agreements can be found in the Department of Planning and Environment's [practice note](#).

As per Council's policy for each agreement type, the developer will need to cover 100% of Council's costs of and incidental to:

- Negotiating, preparing and entering into an agreement (including associated legal costs).
- Enforcing the agreement.

There is an application form for each [planning agreement](#) and [WIKA](#). Application fees also apply. Please refer to Council's [Fees & Charges](#) for further information.