

# **Maitland City Council**

## **Works-in-Kind / Material Public Benefits Policy 2024**

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## Part 1 - Introduction

### 1 Definitions of terms

**bank guarantee** means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
  - (i) Australia and New Zealand Banking Group Limited,
  - (ii) Commonwealth Bank of Australia,
  - (iii) Macquarie Bank Limited,
  - (iv) National Australia Bank Limited,
  - (v) St George Bank Limited,
  - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

**bond** means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency.

**contribution credit** means the extent to which a monetary section 7.11 contribution for a contributions plan work or more than one contributions plan work is satisfied by the provision of a material public benefit or more than one material public benefit provided under a WIKA.

**contributions plan** means a contributions plan authorising the imposition of monetary section 7.11 contributions approved by the Council under section 7.18 of the EPA Act.

**contributions plan work** means a work provided for in the works schedule in a contributions plan.

**contributions plan works category** means a category of public facilities specified in the works schedule in a contributions plan.

**contributions plan works cost** means the estimated cost attributed to a contributions plan work as specified in the works schedule in a contributions plan.

**Council** means Maitland City Council.

**Council works supervisor** means a person appointed by the Council to supervise the carrying out of work under a WIKA.

**developer** means person entitled to act on a development consent.

**development application** means an application for development consent.

**development consent** means a consent under Part 4 of the EPA Act to carry out development and includes a complying development certificate (within the meaning of the EPA Act).

**EPA Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**LEP** means *Maitland Local Environmental Plan 2011*.

**LGA** means local government area.

**material public benefit (MPB)** means a work or anything else that benefits the public or a section of the public.

**modification application** means an application under section 4.55 or 4.56 of the EPA Act to modify a development consent.

**monetary section 7.11 contribution** means a monetary contribution required by a condition of development consent imposed under section 7.11 of the EPA Act.

**Part 6 certificate** means a certificate of a kind specified in section 6.4 of the EPA Act.

**practical completion certificate** means a certificate issued by the Council to a developer to the effect that, in the reasonable opinion of the Council, works required to be provided to the Council under a WIKA are substantially complete and any incomplete part or defect is of a minor nature.

**public facilities** means public infrastructure, facilities, amenities and services.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021*.

**surplus contribution credit** means the extent to which the value of specified material public benefits provided under a WIKA exceeds the amount of all monetary section 7.11 contributions or monetary section 7.11 contributions in specified contributions work categories required by a development consent.

**WIKA officer** means a Council officer having the function of negotiating a proposed WIKA on behalf of Council.

**WIKA application fee** means the fee determined in accordance with Council's Schedule of Fees and Charges. **Works-in-Kind Agreement (WIKA)** – see clause 3.4.

## **2 Purpose of Policy**

2.1 The primary purpose of this Policy is to set out Maitland City Council's policies and procedures relating to the acceptance of MPBs offered by developers in part or full satisfaction of the payment of monetary section 7.11 contributions, and the use of WIKAs by the Council for that purpose.

2.2 Other purposes of this Policy are;

2.2.1 to set out the procedures for the making and assessment of applications by developers to the Council to enter into WIKAs, and

2.2.2 to ensure probity, consistency and transparency in the decision-making process relating to WIKAs.

## **3 Legislative framework for WIKAs**

3.1 Section 7.11(1) of the EPA Act provides that if 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 facilities within a council's local government area, the consent authority may grant the development consent subject to a condition requiring, among other things, that the developer pay to the Council a monetary section 7.11 contribution.

3.2 Section 7.11(3) of the EPA Act provides that:

3.2.1 if a consent authority has provided public amenities or public services within a council's area in preparation for or to facilitate the carrying out of development in the area, and

- 3.2.2 development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,
- the consent authority may grant the development consent subject to a condition requiring, among other things, that the developer pay to the Council a monetary section 7.11 contribution.
- 3.3 Section 7.11(5)(b) of the EPA Act enables the consent authority to accept the provision of a material public benefit in part or full satisfaction of the payment by a developer of a monetary section 7.11 contribution.
- 3.4 A WIKA is an agreement between the Council and a developer entered into for the purpose of section 7.11(5)(b) of the EPA Act under which the Council accepts the provision of a material public benefit by the developer in part or full satisfaction of the obligation to pay a monetary section 7.11 contribution.
- 3.5 Competitive tendering under section 55(1) of the *Local Government Act 1993* (NSW) is not feasible before the Council enters into a WIKA because the only possible primary party to the WIKA other than Council is the person having the benefit of a development consent requiring the payment of a monetary section 7.11 contribution which will be wholly or partially offset under the WIKA. For this reason, the Council has resolved that tenders will not be invited before the Council enters into such an agreement.

## **Part 2 - Council's policies on the use of WIKAs**

### **4 When will Council decide to enter into a WIKa?**

- 4.1 The acceptance of a MPB offered by a developer to satisfy a monetary section 7.11 contribution obligation under a development consent is at the sole and complete discretion of the Council.

#### **MPBs involving contributions plan works**

- 4.2 If the MPB offered by a developer is for the provision, in whole or part, of a contribution plan work to which a monetary section 7.11 contribution obligation relates, the Council will consider the following matters in connection with the offer:
- 4.2.1 whether the works are in the same contributions plan work category as the monetary section 7.11 contributions the developer seeks to offset by the provision of the works,
- 4.2.2 whether the works are of a kind that is suitable to be provided under a WIKa,
- 4.2.3 whether the works may be provided by the developer in a more timely and efficient manner than the Council,
- 4.2.4 whether the developer proposes any variation to contributions plan works,
- 4.2.5 whether the developer proposes to carry out the works to a higher standard than the works specified in the contributions plan,
- 4.2.6 whether the works will be to a suitable standard for the Council to eventually accept,

- 4.2.7 the estimated cost of the proposed works and whether that cost is more or less than the contributions plan works costs for the works; and
- 4.2.8 the timeframe within which the works will commence and be completed,
- 4.2.9 whether the works schedule in the Council's contributions plan so far as it relates to the works, remains valid or requires amendment,
- 4.2.10 whether approval of the application would lead to a short-fall in monetary section 7.11 contributions for any works in the works schedule in the contributions plan;
- 4.2.11 the overall effect on the implementation of the contributions plan works schedule of the Council approving the application,
- 4.2.12 whether the applicant proposes terms and conditions of the WIKA that differ to the Council's publicly available template WIKA or this Policy and whether the differences are, in the Council's opinion, justified in the circumstances,
- 4.2.13 whether, on balance, the developer's proposal to enter into the WIKA will be advantageous to the Council and the community,

#### **Other MPBs**

- 4.3 If the MPB offered by a developer does not involve works, or does not relate to or is not in accordance with a contribution plan work to which a monetary section 7.11 contribution obligation relates, the Council will consider the following matters in connection with the offer:
  - 4.3.1 whether the benefit offered by the developer addresses the demand for public facilities to which the monetary section 7.11 contribution obligation the developer seeks to offset relates,
  - 4.3.2 the estimated value of the benefit and whether that value is more or less than the contributions plan works costs the developer seeks to offset by providing the benefit; and
  - 4.3.3 the timeframe within which the benefit will be provided,
  - 4.3.4 whether the provision of the benefit would be a suitable and adequate alternative means of addressing the demand for contributions plan works,
  - 4.3.5 whether provision of the benefit would lead to a short-fall in monetary section 7.11 contributions for any contributions plan works;
  - 4.3.6 whether the developer proposes terms and conditions of the WIKA that differ to the Council's publicly available template WIKA or this Policy and whether the differences are, in the Council's opinion, justified in the circumstances,
  - 4.3.7 the effect of accepting the benefit on the Council's ability to deliver contributions plan works and the implication relating to the imposition of monetary section 7.11 contributions in respect of other development,
  - 4.3.8 whether, on balance, the benefit is suitable standard for the Council to accept and the developer's proposal to enter into the WIKA will be advantageous to the Council and the community,

## **5 Parties to WIKA**

- 5.1 The Council and the developer must be the parties to a WIKA.
- 5.2 Where work the subject of the WIKA is to be carried out on land not owned or controlled by either the Council or the developer, the relevant landowner must also be a party to the WIKA.
- 5.3 The Council will consider on a case by case basis whether any other person associated with the developer or the landowner should be a party to the WIKA.

## **6 Cost works**

### **Responsibility for cost of work**

- 6.1 The developer will be responsible for meeting all costs of and incidental to works required to be provided to Council under a WIKA unless the WIKA provides for a payment by Council or a third party towards the cost of the works.

### **Contribution by Council towards cost of works**

- 6.2 If the Council agrees to make a payment towards the cost of works under a WIKA, it will not be required to do so until both of the following have occurred:
  - 6.2.1 all of the works in respect of which the Council will make a payment have vested in the Council, and
  - 6.2.2 all land on which such works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.

### **Determining the cost of works**

- 6.3 Determining the cost of works under a WIKA is relevant in the following circumstances:
  - 6.3.1 where the WIKA provides for a contribution credit,
  - 6.3.2 where the WIKA provides for a surplus contribution credit,
  - 6.3.3 where the Council or a third party will contribute to the cost of the works.
- 6.4 In such circumstances, the Council may require the developer to engage, at its cost, a suitably qualified and experienced quantity surveyor independent of the parties to provide a written opinion on the estimated cost of the works.

## **7 Contribution credit**

- 7.1 The primary purpose of a WIKA is to apply a contribution credit against monetary section 7.11 contributions payable under a development consent (for the purpose of section 7.11(5)(b) of the EPA Act).
- 7.2 The effect of doing so is to wholly or partly (as the case may be) satisfy the developer's obligation under the development consent to pay the relevant monetary section 7.11 contributions.



- 7.3 Contribution credits to offset monetary section 7.11 contributions under a WIKA will initially be provided in the same contributions plan works category as the works giving rise to the contribution credits, and may, at Council's discretion, be provided from other contributions plan works categories on a case by case basis.
- 7.4 Unless otherwise agreed by Council, the \$ value of a contribution credit for the provision of contributions plan works by a developer under a WIKA will not exceed the contributions plan works cost for the relevant works.
- 7.5 The provision of a contribution credit by the Council under a WIKA is given in consideration of the developer providing the relevant works and otherwise performing all of its obligations under the WIKA.
- 7.6 Accordingly, a WIKA will ordinarily provide that a contribution credit is not granted and cannot be applied against monetary section 7.11 contributions payable under a development consent until both of the following have occurred:
  - 7.6.1 all of the works to which the contribution credit applies have vested in the Council, and
  - 7.6.2 all land on which such works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.

## **8 Surplus contribution credit**

- 8.1 Where the Council agrees to recognise a surplus contributions credit in a WIKA, the WIKA will provide for the way in which the surplus contribution credit will be dealt with.
- 8.2 At the Council's discretion and depending on the circumstances, a WIKA may allow a surplus contribution credit:
  - 8.2.1 to be applied in satisfaction of monetary section 7.11 contributions payable by the developer in respect of other development as specified in the WIKA,
  - 8.2.2 to be assigned by the developer to a third party and used by the third party in accordance with a deed of assignment between the Council, the developer and the third party, or
  - 8.2.3 paid to the developer,or any combination of the above.
- 8.3 Surplus contribution credits referred to in clause 8.2.1 and 8.2.2 will generally be required to be applied in the same contributions plan works categories as those to which the WIKA relates.
- 8.4 Where a WIKA allows for a surplus contribution credit to be paid to the developer, the timing and manner of payment will be at the Council's discretion depending on the circumstances but may typically be as follows:
  - 8.4.1 firstly, payment will be made by Council from available monetary development contributions held by the Council towards the cost of the contributions plan works to which the WIKA relates,
  - 8.4.2 secondly, payment will be made by Council from any available uncommitted funds in the Council's 'Repealed Funds Account', and

- 8.4.3 thirdly, payment will be made if and only if the Council has accumulated sufficient monetary development contributions towards the contributions plan works to which the WIKA relates to enable it to make the payment.
- 8.5 Generally, a WIKA will provide for the indexation of a surplus contribution credit.

## **9 Security for performance**

- 9.1 Security for the enforcement of a WIKA may be achieved using a number of different means.
- 9.2 The primary forms of security that may be provided for in a WIKA, depending on the circumstances of the case, are as follows:
  - 9.2.1 provision by the developer of a bank guarantee or bond in an appropriate amount to secure the developer's obligation to provide works and rectify defects and, where applicable, to maintain works after completion and transfer to Council,
  - 9.2.2 completion of works obligations under the WIKA before the issuing of a Part 6 certificate in respect of the development to which the WIKA relates,
  - 9.2.3 withholding a contribution credit until all of the works to which the contribution credit applies have vested in the Council and all land on which such works have been carried out has been transferred to the Council,
  - 9.2.4 where the WIKA provides for the Council to contribute towards the cost of works, the Council not being required to do so until all of the works in respect of which the Council will make the contribution have vested in the Council and all land on which such works have been carried out has been transferred to the Council,
- 9.3 The procedures under a WIKA for the provision and use of bank guarantees or bonds provided as security under a WIKA are set out in *Part 3 – Procedures for WIKAs* of this Policy.

## **10 Dispute resolution**

- 10.1 A WIKA will provide for the resolution of disputes between the developer and the Council arising in connection with the WIKA to be the subject of formal dispute resolution procedures.
- 10.2 Ordinarily, the WIKA will provide for disputes that cannot be resolved through initial discussions between the parties' nominated representatives to be referred for mediation by an independent mediator unless the dispute relates to a matter that is appropriately dealt with by a suitably qualified and experienced independent expert via expert determination.
- 10.3 The WIKA will ordinarily provide that the determination of a dispute referred for expert determination is binding on the Parties.
- 10.4 The WIKA will ordinarily provide that the parties cannot exercise their legal rights outside of the WIKA in relation to a dispute until the dispute resolution process under the WIKA has run its course.

- 10.5 The WIKA will ordinarily require the parties to bear their own costs of participating in a mediation or expert determination process and to share equally the costs of the mediator or expert.

## **11 Breach by developer & enforcement**

- 11.1 A WIKA will provide that where the Council considers that a developer is in breach of its obligations under a WIKA, the Council must give the developer a written notice providing details of the breach and requiring the developer to rectify the breach before the Council may exercise any remedies under the WIKA in relation to the breach.
- 11.2 Where a developer has failed to comply with a notice from the Council to remedy the breach, the Council will ordinarily be entitled to do one or more of the following:
- 11.2.1 call-up any financial security provided under the WIKA,
  - 11.2.2 step-in and perform the developer's obligations under the WIKA either in relation to the breach or more generally,
  - 11.2.3 recover costs incurred in rectifying the breach from the developer in a court of competent jurisdiction, or
  - 11.2.4 terminate the WIKA.
- 11.3 The WIKA will set out the rights and obligations of the parties if the Council terminates the WIKA.

## **12 Costs**

- 12.1 The Council requires the developer under a WIKA to be responsible for all of the Council's costs and expenses related to the WIKA.
- 12.2 This will include (without limitation) Council's costs and expenses of:
- 12.2.1 preparing, negotiating, executing, registering, and stamping (if required), a WIKA,
  - 12.2.2 any variation of the approved design or specification of works under the WIKA requested by the developer,
  - 12.2.3 an amendment of a WIKA other than amendment requested by Council,
  - 12.2.4 preparing and registering any related instrument on title such as any easements, covenants, restrictions, charges and caveats required or allowed by the WIKA,
  - 12.2.5 preparing, negotiating, executing, registering, and stamping (if required), any other related document related to the specific WIKA, such as any deed of novation or assignment,
  - 12.2.6 enforcing and remedying a breach of the WIKA, including costs and expenses incurred by the Council in connection with investigating a non-compliance by the developer and enforcing compliance by the Developer with this Deed (including the costs and expenses of preparing and issuing notices for those purposes).

### **13 Indemnity & release by developer**

- 13.1 A WIKA will require the developer to release the Council from any claims the developer may have against the Council arising in connection with the performance of the developer's obligations under the WIKA.
- 13.2 A WIKA will require the Developer to indemnify the Council from and against all claims against the Council arising in connection with the performance of the developer's obligations under the WIKA.

## **Part 3 - Procedures for WIKAs**

### **14 Application to enter into WIKA**

#### **Initial discussions**

- 14.1 A proposed WIKA with Council in relation to a development should be discussed with Council officers at the earliest opportunity.
- 14.2 The Council prefers discussions concerning a proposed WIKA to occur in conjunction with pre-lodgement discussions concerning the development application for a proposed development.

#### **Written application**

- 14.3 An application to Council to enter into a WIKA must be made in a form approved by Council and be accompanied by payment of the WIKA application fee.
- 14.4 The information provided by the developer should explain and formalise all details of the works and other MPBs that were identified in the developer's initial proposal.
- 14.5 The application should specify whether the form and terms and conditions of the proposed WIKA will differ from the Council's publicly available template WIK and must justify all proposed changes.
- 14.6 The steps involved in the process for entering into a WIKA are outlined below in the *Annexure – WIKA Process*.

#### **Supporting information**

- 14.7 A formal written application to enter into a WIKA must be accompanied by the following detailed information:
  - 14.7.1 a copy of all documentation including plans, drawings and specifications for the proposed works (if required by Council);
  - 14.7.2 detailed costings for the work independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors or estimated contract costs prepared by a person who can demonstrate equivalent qualifications;
  - 14.7.3 a construction program including commencement and completion dates and relevant milestones; and

- 14.7.4 written consent to carry out the work from all landowners affected by the proposal,
- 14.7.5 a statement relating to each of the matters set out in section 4.2 or section 4.3 (as relevant to the application).

### **Consideration of written application**

- 14.8 The Council will take into consideration the information contained in the written application and the matters set out in clauses 4.2 and 4.3, as relevant to the application, in deciding whether to approve the application.
- 14.9 Council may, at the applicant's cost, engage a suitably qualified and experienced person independent of the parties to verify the developer's estimate of the cost of the proposed works under the WIKA.

### **Determination of written application**

- 14.10 The decision whether to agree to accept a MPB offered by a developer and enter into a WIKA is at the sole discretion of Council.
- 14.11 After considering the formal written application, supporting information and matters relevant to the application, the Council may:
  - 14.11.1 approve the application unconditionally or subject to conditions and with or without such modifications as the Council considers appropriate, or
  - 14.11.2 refuse the application.
- 14.12 Where the Council approves an application to enter into a WIKA before the grant of development consent to the development to which the WIKA relates, the Council's approval will not operate and will have no force or effect unless and until the consent is granted and contains a section 7.11 condition as contemplated in the WIKA negotiation between the Council and the developer.
- 14.13 Council will inform the applicant in writing of its determination of a formal written application to enter into a WIKA.
- 14.14 A WIKA that is entered into as a result of the Council's determination to approve an application must conform to the Council's determination of the WIKA application.

## **15 WIKA template**

- 15.1 The Council requires specific provisions to be included in all WIKAs that require the carrying out of works.
- 15.2 Provisions relating to the carrying out of works are contained in the Council's currently publicly available template WIKA.
- 15.3 A WIKA must be entered into in the form of, and on the same terms and conditions as contained in, the Council's publicly available template WIKA.
- 15.4 The provisions of a particular WIKA applying to the carrying out of works are subject to the circumstances of each case, which may require the deletion or modification of some of the provisions contained in the template WIKA or the inclusion of other provisions.

## **16 Key procedures & requirements under WIKA**

### **Procedures relating to financial security**

- 16.1 The Developer may be required under a WIKA to deliver to the Council a bank guarantee or bond required as security for works before any construction work commences.
- 16.2 The Council will hold the bank guarantee or bond as security for performance by the developer of its obligations under the WIKA to provide the relevant works to the Council.
- 16.3 The Council will be entitled to access and use the bank guarantee or bond where the developer has been notified of a breach of the WIKA by the Council and has failed to rectify the breach or where the Council terminates the WIKA for a breach by the developer.
- 16.4 The Council will be required to release and return the bank guarantee or bond or any unused part of it to the Developer after all of the works under the WIKA have vested in the Council, and all land on which the works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.
- 16.5 The developer will be permitted to provide the Council with a replacement bank guarantee or bond at any time.
- 16.6 If the Council calls-up the bond or bank guarantee or any portion of it under the WIKA, the developer may be required to provide a further or replacement bond or bank guarantee to ensure that the amount of security held by the Council equals the amount the Council is entitled to hold under the WIKA.

### **Design & specification of works**

- 16.7 The applicant must work cooperatively with relevant Council staff regarding the design and specifications for works the subject of a WIKA.
- 16.8 The Council has standard design and specification requirements for different public works, which the developer must use if required by Council.
- 16.9 The Council may require the developer to change any plans and drawings of the works that it considers necessary or desirable as a precondition to approving the plans and drawings.
- 16.10 The Developer must not make any application for a regulatory approval relating to the works the subject of a WIKA unless the Council has approved the plans, drawings and specifications of the works.

### **Regulatory approvals for works**

- 16.11 It is the responsibility of the applicant to obtain all necessary regulatory approvals for the works.
- 16.12 The Council will not allow works to commence unless all such approvals have been obtained.
- 16.13 Where a regulatory approval for works is inconsistent with the Council's determination of the formal written application to enter into the WIKA or the Council's approved design and specification for the works, the applicant must work co-operatively with the Council to achieve a modification of the relevant approval or the design and specification of the works (whichever is appropriate in the circumstances) before works commence.

### **Intellectual property**

- 16.14 The intellectual property in the design and specifications for works the subject of a WIKA, as approved by Council, will belong to the Council.
- 16.15 The applicant must take all necessary steps to ensure that all intellectual property rights in the approved design and specification of the works is transferred to Council.

### **Insurances**

- 16.16 The developer must take out and keep current to Council's satisfaction such insurances as Council requires in relation to the works the subject of a WIKA.
- 16.17 The Developer must also provide Council with satisfactory evidence that all subcontractors engaged in relation to the works have necessary and adequate insurances in relation to the works.

### **Approved persons**

- 16.18 All persons engaged by the developer in carrying out works under a WIKA must be approved by Council.
- 16.19 The developer will be responsible for procuring the compliance with the WIKA of all approved persons.

### **Construction Contract**

- 16.20 The developer must enter into a construction contract for the works the subject of a WIKA before commencement of works occurs.

### **WHS obligations**

- 16.21 The Developer will be the principal contractor under Work Health and Safety laws in respect of works the subject of a WIKA until such time that the Developer engages the contractor to under the construction contract or another person to be the principal contractor and authorises them to have management or control of the workplace relating to the works and to discharge the duties of the principal contractor.
- 16.22 The Developer will be required to use its best endeavours to ensure that all persons involved in the works comply with relevant Work Health and Safety laws in respect of the works.

### **Ownership and risk during construction**

- 16.23 The Developer will own, and be responsible for care of, the works the subject of a WIKA, and bear all risk and liability in connection with the works, until the works are transferred to Council under the WIKA.

### **Notice of commencement**

- 16.24 The developer must give the Council not less than 10 days prior notice of its intention to commence works the subject of a WIKA.

### **Pre-start meeting**

- 16.25 The Developer must organise and conduct a pre-start meeting with Council personnel before starting the construction of the works.

### **Council works supervisor**

- 16.26 The WIKA may provide for the appointment of a Council works supervisor to supervise the carrying out of the works the subject of the WIKA by the developer.
- 16.27 The Council works supervisor will be able to inspect or test the works upon the giving of prior notice to the developer and to make requests and give directions to the developer on Council's behalf in relation to the works.
- 16.28 The developer will be required to promptly comply with all reasonable requests made and directions given by the Council works supervisor in relation to the works.

### **Variation of works**

- 16.29 The developer must not vary works or the cost of works the subject of a WIKA as approved by the Council without the written approval of Council.
- 16.30 The works may be varied at the request of the developer by agreement in writing with Council and the developer must meet all costs incurred by Council in relation to the variation.

### **Practical completion of works**

- 16.31 The developer may make a written request to Council to issue a practical completion certificate for works the subject of a WIKA when the works are substantially complete and any incomplete part or any defect in the works is of a minor nature.
- 16.32 The Council will then inspect the works and will either issue a practical completion certificate or direct the developer as to any aspect of the works that must be completed, rectified or repaired at the developer's cost before the certificate will be issued.

### **Hand-over of works**

- 16.33 At any time after the Council issues a practical completion certificate for works the subject of a WIKA, it may issue a transfer of ownership notice to the Developer relating to the works.
- 16.34 The transfer of ownership notice will specify a date when the works will vest in the Council, which will not be sooner than 14 days after the notice is issued.
- 16.35 The works will vest in the Council on the vesting date stated in the transfer of ownership notice.

### **Transfer of land**

- 16.36 The Developer will be required to dedicate or procure the dedication to the Council of land on which works the subject of WIKA in respect of which a transfer of ownership notice is issued.
- 16.37 The dedication of the land must occur by not later than the vesting date stated in the transfer of ownership notice and at no cost to Council.



**Rectification of defects**

- 16.38 The WIKA will generally specify a defects liability period commencing on the transfer of the ownership of works the subject of a WIKA to Council.
- 16.39 The developer will be required, at its cost, to rectify to the Council's satisfaction any defects in the works notified to it by Council during the defects liability period.

**Maintenance of works**

- 16.40 In some cases, the WIKA may require the developer to maintain works during a specified maintenance period following the transfer of the works to Council.
- 16.41 In such cases, the WIKA will set out the specific maintenance obligations of the developer and the developer must, at its cost, maintain the works to the Council's during the maintenance period.

**Works-as-executed plan**

- 16.42 The WIKA will require the developer to provide the Council with a works-as-executed plan of completed works under the WIKA and to assign or procure the assignment of the copyright in such a plan to the Council.

## Appendix – WIKA process

