



# DRAFT Basic Infrastructure Scheme - Works-in-Kind Agreements

## Purpose

This document outlines the framework for considering Works-in-Kind agreements as an alternative to monetary contributions for satisfying a Charge liability under an approved Basic Infrastructure Scheme.

## 1. Legislative Basis

The legislative foundation for Works-In-Kind agreements is provided under the *Planning, Development and Infrastructure Act 2016* (the Act):

- Section 166(2)(d) recognises the importance of achieving value for money in funding arrangements, including through contestable provision of basic infrastructure.
- Section 169(1)(d) allows for infrastructure works to be delivered on an “in kind” basis as part of a Scheme.

## 2. Scope

Works-in-Kind (WIK) arrangements are an important feature of Basic Infrastructure Schemes, offering an alternative mechanism for delivering infrastructure projects in a timely and coordinated manner.

This framework sets out:

- When WIK agreements may be considered
- The process for negotiating and entering into a WIK agreement
- How WIK credits are managed and applied
- How the system will be operated.

These provisions are to be used by the Scheme Coordinator when assessing and negotiating proposals to deliver infrastructure works in lieu of paying a Subdivision 7 Charge (or a portion thereof) under an approved Basic Infrastructure Scheme.



### 3. Background

- Under the Act a Subdivision 7 Charge may be imposed on land<sup>1</sup> within a Designated Growth Area<sup>2</sup>, and is registered on the Certificate of Title for affected parcels.
- The Charge becomes payable at Specified Events<sup>3</sup> relating to when development is undertaken.
- The Charge liability can be satisfied either through a monetary payment or via a WIK agreement, depending on the type of infrastructure to be delivered.
- A WIK agreement must be approved by the Scheme Coordinator before this option can be exercised.

### 4. Works-in-Kind Principles

Decision-making on WIK proposals is guided by the principles outlined in section 168(2) of the Act. These include:

- Delivery of fit-for-purpose, high-quality infrastructure
- Ensuring value for money, with infrastructure meeting the specifications of the Asset Owner and relevant Australian Standards
- Promoting transparency, fairness, consistency, and certainty for developers regarding in-kind contributions
- Maintaining a consistent approach to WIK proposals over the life of the Scheme.

### 5. General Provisions

- 5.1 Following Scheme approval, a landowner or developer may voluntarily propose to deliver specific Scheme Infrastructure Projects as part of satisfying their Charge liability.
- 5.2 Acceptance of a WIK proposal is at the discretion of the Scheme Coordinator, in consultation with the relevant Asset Owner
- 5.3 All WIK proposals must be approved by the Scheme Coordinator, following consultation with the relevant asset authority
- 5.4 The Scheme Coordinator may refuse a proposal if it does not meet the principles outlined in section 168(2) of the Act.

### 6. Eligibility Criteria

To be eligible for a credit or offset against a Charge, the proposed works must meet the following criteria:

- a) Be listed as a Scheme Infrastructure Project associated with the Charge funding arrangement
- b) Be located within the relevant Designated Growth Area

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<sup>1</sup> Section 169(1)(a)(iii) of the Act

<sup>2</sup> Section 173(3)(c) of the Act

<sup>3</sup> See Specified Events for Payment section within the relevant Scheme



- c) Be deliverable to the specifications of the Asset owner and relevant Australian Standards
- d) Be procured through a process that ensures value for money
- e) Be delivered within an agreed timeframe
- f) Not have been previously delivered or funded by other means
- g) Align with the Scheme's published Works Program to ensure coordinated and timely infrastructure provision, or demonstrate that the proposal will not result in works which are significantly out of sequence with the Work Program.

## 7. Acceptance of Application

- 7.1 When a Scheme Coordinator accepts a proposal for a party to undertake WIK, the Coordinator shall notify the relevant party in writing. This notification will include:
- a) The agreed scope of works
  - b) The agreed method of delivery
  - c) The estimated costs of the works
  - d) The expected delivery timeframe
  - e) The agreed approach to recognising Works in Kind
  - f) Any other relevant information determined by the Scheme Coordinator.
- 7.2 The Scheme Coordinator will assess WIK proposals and provide a written response within **30 business days** of receiving a complete application. If a longer timeframe is required the Scheme Coordinator must advise the applicant in writing, providing details of the revised response timeframe.

## 8. Procurement

- 8.1 Developers or landowners proposing WIK must demonstrate transparent procurement and engagement practices as part of their application. This ensures that the works are delivered to appropriate standards and represent value for money, in accordance with Part 13 of the Act relating to infrastructure schemes.
- 8.2 This clause does not supersede or exempt any existing procurement requirements applicable to the delivery of assets for an asset owner. It is the responsibility of the constructing party to obtain all necessary consents or approvals related to procurement prior to making a WIK application to the Scheme Coordinator.

## 9. Credits and Reimbursements

- 9.1 Where the WIK option is elected, landowners are entitled to receive a credit for the construction of infrastructure or the provision of land in lieu of paying a Charge.
- 9.2 By submitting a WIK proposal, the landowner or developer acknowledges and agrees that any reimbursement from the Scheme Fund is at the discretion of the Scheme Coordinator. Any portion not reimbursed may instead be recognised as a credit.



- 9.3 Where land is provided to facilitate the delivery of required infrastructure, the landowner will receive a credit equivalent to the value of the land.
- 9.4 The value of the land credit will be based on the current valuation methodology outlined in the Infrastructure Scheme at the time such application is lodged.
- 9.5 Upon recognition of WIK, the Scheme Coordinator will issue written confirmation of the works undertaken and any associated credit that may be issued as a result of the works.
- 9.6 For infrastructure delivered in stages, partial credits may be issued proportionate to the value of completed works, subject to verification and certification by the Asset Owner.
- 9.7 The Scheme Coordinator is responsible for maintaining records of all WIK activities and associated credits issued under the Scheme.
- 9.8 All credits or reimbursements must be issued in accordance with the Scheme provisions and recorded in the Scheme register.
- 9.9 Credits are non-transferable between parties unless written approval is obtained from the Scheme Coordinator. Upon approval, records must be updated accordingly.
- 9.10 Actual Costs incurred by the landowner in delivering or procuring infrastructure identified in the Scheme will be offset against future financial contribution liabilities for subsequent development on the site. Credits will be issued for approved amounts by the Scheme Coordinator.
- 9.11 Credits pursuant to the above clause must be applied to the portion of the Scheme Charge relevant to the asset class delivered. For example, credits for local road infrastructure must be applied to the portion of the Charge which relates to construction of local road infrastructure as identified under the Scheme.
- 9.12 For the avoidance of doubt, other portions of the Scheme Charge remain payable and are not affected by credits applied to specific asset classes.
- 9.13 Landowners must obtain all necessary Development Authorisations under the Act and comply with any statutory requirements for delivering approved infrastructure projects.
- 9.14 The design, construction, and handover of approved infrastructure must comply with the Asset Owner's protocols and applicable standards at the time of design.
- 9.15 WIK must be delivered to the reasonable satisfaction of the Asset Owner, including compliance with construction, handover, and maintenance standards.
- 9.16 Where a Council or Asset Owner elects to directly deliver infrastructure instead of WIK, the Scheme Coordinator must arrange reimbursement from the Scheme Fund to the value of the delivered works. If full reimbursement is not immediately possible, a repayment arrangement must be established consistent with the financial management principles of the Scheme.
- 9.17 Upon confirmation of direct delivery, the Scheme Coordinator must update the infrastructure work program and Scheme documentation to reflect changes in timing, scope, and funding. These updates must be communicated to relevant stakeholders and incorporated into future reporting and valuation assessments.



9.18 Credits may be used by the landowner of the relevant sites to offset future financial contribution liabilities under this Scheme or any variation to the Scheme.

## 10. Actual Delivery Costs

10.1 Where a developer or landowner undertakes (WIK, the Scheme Coordinator may recognise actual delivery costs, subject to the provision of supporting documentation to the reasonable satisfaction of the Scheme Coordinator. Acceptable evidence includes:

- Certified invoices and payment records
- Independent Quantity Surveyor (QS) reports
- Tender documentation and executed contracts
- Asset Owner certification of scope and completion
- Benchmarking against comparable infrastructure delivered by councils or public authorities

10.2 If the actual cost of delivering infrastructure:

- Exceeds the Scheme's estimated value, the developer may receive a Credit or reimbursement for the higher amount, subject to verification and approval.
- Is lower than the Scheme's estimated value, the Credit or reimbursement shall reflect the lower actual cost.

Verified cost variations will be considered in the next Scheme review or amendment. The Scheme Coordinator must:

- Update the Funding Arrangement to reflect revised infrastructure costs
- Adjust the applicable Scheme Charge in accordance with section 169(2)(a)(ii) of the Act
- Document and publish changes in the Scheme register and annual report

10.3 Updated Scheme Charges will not apply retrospectively. Charges are fixed at the time of consent and will not be adjusted or reimbursed.

10.4 Evidence of actual costs must be submitted within 60 business days of practical completion. The Scheme Coordinator will assess the submission within 30 business days and issue a written determination of the recognised value.

## 11. Valuation Principles

11.1 The value of WIK contributions will be determined based on:

- Independent Quantity Surveyor (QS) cost estimates.
- Tendered construction costs (if available).
- Benchmarking against similar council-delivered infrastructure.

11.2 All valuations must be approved by both the Scheme Coordinator and Asset Owner and may be subject to audit.



- 11.3 Each Scheme will determine particular circumstances for valuation relevant to the context of the Scheme.
- 11.4 Alternative valuation methods may be considered, subject to approval by the Scheme Coordinator and Asset Owner.

## 12. Refund of Credit

- 12.1 Once development of a parcel is complete and the terms of the Scheme are no longer applicable, the site will be deemed finalised..
- 12.2 Following finalisation, a party holding a Credit may apply to the Scheme Coordinator for reimbursement from the Scheme Fund.
- 12.3 In considering a reimbursement application, the Scheme Coordinator shall consider:
  - a) The current balance of the Scheme Fund
  - b) The nature of the Credit
  - c) The works undertaken
  - d) Any outstanding liabilities of the applicant
  - e) Existing works programmes which rely on the Fund for payment.
- 12.4 The Scheme Coordinator shall use best endeavours to reimburse the applicant for the relevant Credit.
- 12.5 Where reimbursement is approved, the Scheme Coordinator shall determine appropriate repayment terms, including timing, frequency, and conditions.
- 12.6 For the avoidance of doubt, repayment shall be staged to ensure the Fund remains capable of supporting other infrastructure commitment under the Scheme.
- 12.7 Where multiple credits exist, higher-magnitude Credits will be prioritised. Repayment timing shall reflect the considerations outlined in the above clause.
- 12.8 Reimbursement will reflect the reasonable cost of the infrastructure delivered, minus any deductions applied under the Scheme's Operating Provisions.
- 12.9 If immediate reimbursement is not possible, the Scheme Coordinator shall negotiate a repayment arrangement that ensures timely reimbursement without unduly compromising the integrity of the Scheme or the Fund.

## 13. Dispute Resolution

- 13.1 In the event of a dispute between the developer, Asset Owner, or Scheme Coordinator regarding the scope, valuation, or delivery of WIK, the parties must first attempt to resolve the matter through good faith negotiation.
- 13.2 Disputes must be raised in writing within 20 business days of the triggering event. If unresolved, mediation should be initiated within 30 business days.
- 13.3 If mediation fails, the matter may be referred to an independent mediator or expert agreed upon by all parties.



## 14. Register and Reporting

- 14.1 The Scheme Coordinator shall maintain a register of all approved WIK agreements, including details of scope, value, and delivery status.
- 14.2 Copies of the register shall be made available to any landowner within the Designated Growth Area upon request.
- 14.3 An annual report summarising WIK activity shall be published in association with other reporting provided in relation to the Scheme.

## 15. Documentation Requirements

The following documentation must be submitted with any WIK proposal:

- Completed WIK Proposal Form
- Quantity Surveyor (QS) cost estimate or tender documentation
- Design plans and specifications
- Construction program
- Insurance and bonding details

## 16. Procedural Steps for Proponents

### Step 1: Initial Proposal

Submit a written proposal to the Scheme Coordinator that includes:

- The infrastructure item(s) proposed for delivery
- Estimated cost and delivery timeline
- Evidence of alignment with the Infrastructure Scheme

### Step 2: Preliminary Assessment

The Scheme Coordinator assesses the proposal against:

- Infrastructure Scheme priorities and delivery schedule
- Technical feasibility and compliance with design standards
- Design advice or approval from the Asset Owner
- Financial and legal implications

### Step 3: Formal Agreement

If the proposal is approved in principle, the developer and council will enter into a formal agreement. This agreement:

- Is based on the template provided in Appendix 1
- Includes scope of works, valuation method, delivery standards, maintenance obligations, and the agreed offset amount

**Step 4: Design and Approvals**

- The Developer must submit detailed design plans to the Asset Owner for approval
- Evidence of design approval must be provided to the Scheme Coordinator

**Step 5: Construction and Supervision**

- The Developer undertakes works in accordance with approved plans
- The Asset Owner will conduct inspections during the construction phase

**Step 6: Practical Completion**

- Upon completion, the Developer must request a Statement of Practical Completion
- The Asset Owner will verify compliance and issues certification

**Step 7: Valuation Offset Application**

- The Scheme Coordinator will apply the agreed offset against the Developer's contribution liability
- Any shortfall must be paid as a monetary contribution

**Step 8: Maintenance and Defects Liability**

- The Developer must provide a maintenance bond as specified by the Asset Owner
- A defects liability period – typically 12 months – will apply, as determined by the Asset Owner



## 17. Definitions

<b>Asset Owner</b>	Relates to any public authority - local or state government - which is identified within the Infrastructure Scheme as having a present, contingent or future legal or equitable estate or interest in any goods or property.
<b>Charge</b>	Means a charge imposed under Part 13, subdivision 7 of the PDI Act.
<b>Credit</b>	A financial recognition issued by the Scheme Coordinator for approved Works-in-Kind, which may be used offsetting the developer's future infrastructure contribution liability.
<b>Department</b>	Department for Housing and Urban Development
<b>Designated Growth Area</b>	As defined in Section 162 (2) of the Act. Represents the spatial area to which the infrastructure scheme applies.
<b>Fund</b>	Established in accordance with Section 182 of the Act. Represents the pool of financial contributions and obligations collected under the Scheme, used to reimburse or fund infrastructure delivery.
<b>In Kind Agreements</b>	Refers to between the Scheme Coordinator and a developer regarding the provision of infrastructure works by developers in exchange for a 'credit' or offset against the Charge.
<b>Scheme Infrastructure Projects</b>	An infrastructure project forming part of the Scheme.
<b>Works in Kind</b>	Means the construction or provision of the whole or part of infrastructure works and/or land that is identified in an approved Infrastructure Scheme pursuant to Part 13 of the <i>Planning, Development and Infrastructure Act 2016</i> in lieu of a cash payment, to meet the whole or part of their infrastructure contribution liability.



## 18. Roles and Responsibilities

<b>Scheme Coordinator</b>	Make decisions on applications from developers and finalise and execute In Kind Agreements with developers, in consultation with the Asset Owner.
<b>Department</b>	Supports the Scheme Coordinator in the day-to-day function of the scheme, policy implementation and providing advice relating to broader infrastructure planning objectives.
<b>Asset Owner</b>	Responsible for reviewing and approving infrastructure designs, inspecting works, certifying completion, and accepting handover of assets.

### For more information:

Growth and Infrastructure Coordination Unit

Department for Housing and Urban  
Development

**(08) 7133 3126**

[DHUD.GICUnit@sa.gov.au](mailto:DHUD.GICUnit@sa.gov.au)

[plan.sa.gov.au/en/infrastructure-schemes](http://plan.sa.gov.au/en/infrastructure-schemes)



## APPENDIX 1: Template Works In Kind Agreement

### WORKS-IN-KIND AGREEMENT

Date: [Insert Date]

Parties:

- Scheme Coordinator: [Insert Name and Title]
- Developer: [Insert Legal Entity Name, ABN/ACN]
- Asset Owner: [Insert Name of Council or Authority]

#### 1. Background

A. The Developer is liable to pay a Charge under the Basic Infrastructure Scheme.

B. The Developer has proposed to deliver certain infrastructure works in lieu of monetary payment.

C. The Scheme Coordinator has agreed to accept the Works-in-Kind (WIK) proposal subject to the terms of this Agreement.

#### 2. Definitions

Include definitions consistent with the Scheme Policy (e.g., Charge, Asset Owner, Scheme Infrastructure Project, Credit, etc.).

#### 3. Scope of Works

- Description of infrastructure works to be delivered.
- Location of works (including land details).
- Reference to the relevant Scheme Infrastructure Project.

#### 4. Delivery Obligations

- Developer must deliver works in accordance with approved design plans and specifications.
- Works must comply with relevant Australian Standards and Asset Owner protocols.
- Developer must obtain all necessary development authorisations.

#### 5. Timing



- **Commencement date.**
- **Milestones and completion date.**
- **Provision for extensions (if applicable).**

#### **6. Valuation and Credit**

- **Agreed value of works (based on QS estimate, tendered costs, or indexed rates).**
- **Method for calculating partial credits if works are staged.**
- **Credit to be applied against the relevant portion of the Charge.**

#### **7. Maintenance and Defects Liability**

- **Minimum 12-month defects liability period.**
- **Maintenance bond**
- **Handover requirements (as-built drawings, manuals, warranties).**

#### **8. Reimbursement (if applicable)**

- **Conditions under which reimbursement from the Scheme Fund may occur.**
- **Timing and method of reimbursement.**
- **Consideration of fund balance and outstanding liabilities.**

#### **9. Dispute Resolution**

- **Good faith negotiation.**
- **Mediation by an independent third party.**
- **Escalation to court or tribunal if unresolved.**

#### **10. Restrictions on Land Dealings (if applicable)**

- **Restrictions on sale, lease, or development of land subject to WIK until obligations are fulfilled.**
- **Consent requirements for dealings.**

#### **11. Records and Reporting**



- **Scheme Coordinator to maintain records of WIK agreements and credits.**
- **Annual reporting obligations.**

## **12. Termination**

- **Conditions under which the agreement may be terminated.**
- **Consequences of default or non-performance.**

## **13. General Provisions**

- **Entire agreement clause.**
- **Governing law (South Australia).**
- **Assignment and variation provisions.**