Guidelines for Infrastructure Delivery Agreements

This document explains how Infrastructure Delivery Agreements will operate in the Regional Infrastructure Contributions Framework as part of infrastructure contributions reform.

Purpose of this document

This document outlines the:

- use and benefit of Infrastructure Delivery Agreements (IDAs).
- overarching principles and criteria for the assessment of proposed IDAs
- scope of the policy to be developed in support of the process for IDAs
- difference between State Planning Agreements and IDAs.

Read these draft guidelines in conjunction with the associated:

- RIC discussion paper
- RIC SEPP explanation of intended effects
- guidelines for State Planning Agreements
- guidelines for prioritising RIC Fund investment.

About Infrastructure Delivery Agreements

Under the Regional Infrastructure Contributions Framework (RIC Framework), developers will make financial contributions to help meet the cost of providing new or upgraded state or regional infrastructure required to service new developments.

Developers can also seek to partner with the NSW Government on the delivery of state or regional infrastructure to support new development. Like existing works-in-kind for state infrastructure (WIKAs) IDAs allow developers to provide infrastructure or land instead of making a payment under the RIC. IDAs are the method by which a developer and the Minister for Planning and Public Spaces will confirm the arrangements, obligations, and entitlements in these situations.

The benefits of Infrastructure Delivery Agreements

IDAs allow developers to offset all or part of their monetary contributions by providing works or dedicating land that would otherwise have been delivered or acquired by the government. This is particularly useful in situations where a development proposal relies on planned state or regional infrastructure being brought forward.

Agreements that facilitate the direct dedication of infrastructure assets by landowners and developers play a significant role in providing state and regional infrastructure. For example, during the period 2011 to 2021 approximately 50 Special Infrastructure Contribution (SIC) WIKAs and Planning Agreements in SIC areas dedicated land and delivered infrastructure to the value of $437.6 million. This is in addition to SIC cash contributions which fund infrastructure grant programs.

IDAs offer significant benefits to the community including:

- substantial cost savings, where community land is secured before cost escalation following rezoning or development
- allowing developers to deliver infrastructure more cost efficiently and sooner than state agencies can, as well as realising the benefits of economic activity and jobs sooner
- securing infrastructure that is needed or advantageous to orderly development, such as regional roads
- enabling developers to masterplan and develop cashflow to incorporate significant community benefits such as community facilities, open space, or transport.

Projects that have been secured or delivered through Special Infrastructure Contribution WIKAs and Planning Agreements in SIC areas include:

- New Shanes Park Road (Abell Road), Marsden Park: accelerated staged delivery of a road that forms part of the regional road network to support the growing North West Growth Area
- Sections the North West Sydney regional road network including Richmond Road, Townson Road, Nelson Road, Quakers Road and Mustang Drive
- Sections the South West Sydney regional road network including Rickard Road, Gregory Hills Drive, Denham Court Road, Oran Park Drive, Peter Brock Drive and Campbelltown Road
- Education land for Gledswood PS, Gregory Hills PS, East Leppington PS, The Ponds PS, and Garfield Road West PS to support the growing student cohorts.

The role of IDAs under the RIC Framework

In deciding if it will commit to an IDA, the government will consider if the proposed infrastructure or land aligns with the sequencing of development and planned infrastructure investments across a broader region.

While IDAs represent an alternative infrastructure delivery pathway to that envisaged in the operation of the RIC Fund, an IDA must align with the RIC Framework's purpose of supporting the timely and efficient delivery of infrastructure. For more detail on the planned operation of the RIC Fund, see the *Guidelines for RIC Fund Prioritisation*.

The approach to IDAs in the RIC Framework must also meet the following objectives:

- the process should be certain and predictable
- the IDA should support efficient development and infrastructure provision
- the project selection process should be consistent, fair, transparent and have accountability mechanisms
- administration should be simple and costs should be minimal.

The decision to enter into an IDA is at the discretion of the Minister for Planning and Public Spaces. An interagency committee established to manage and make investment recommendations for the RIC Fund will review proposals to help inform the minister's decision.

Principles and criteria for IDAs

The following principles and criteria are proposed to guide applicants and the assessment of applications to enter into an IDA. They seek to align the IDAs process with the principles of the broader RIC Fund Framework.

Principle 1: Reflects state-endorsed infrastructure priorities and aligns with other development and infrastructure plans

Criteria 1.1: RIC Infrastructure is identified in the Growth Infrastructure Needs Assessment Longlist

In collaboration with NSW Treasury, INSW, state agencies and local government, DPIE will lead the development of the annual Growth Infrastructure Needs Assessment (Needs Assessment). The Needs Assessment will identify coordinated regional infrastructure investment priorities required to enable new development and support forecast housing and employment growth over a 10 year period for each region. The Needs Assessment will consider infrastructure needs identified in regional and district plans, place-strategies, precinct plans, and planning proposals, and culminate in the publication of a longlist of infrastructure priorities.

Regional infrastructure identified on the longlist may be delivered by developers in lieu of a payment under the RIC through an IDA. For more detail on the Needs Assessment, see the *RIC Fund Investment Prioritisation Guidelines.*

SVPAs offer an alternative pathway for the nomination of items not on the Needs Assessment. For more details see the *SVPAs Supporting Document*.

Criteria 1.2: Complementary priority investments and staged delivery

To avoid diverting funding from priority projects or the delivery of stranded assets, in assessing an IDA proposal, the department will consider the priority status of the nominated infrastructure item, how it aligns with the timing of planned complementary infrastructure and the infrastructure program for the relevant area.

For a proposal that includes part or a section of an infrastructure item, the department will consider how and when the entirety of the item is expected to be delivered.

Principle 2: Achieves time and/or cost delivery efficiencies

Criteria 2.1: Cost and time efficiency of land dedication

IDAs offer a way for the NSW Government to secure land for infrastructure more efficiently than through other acquisition methods such as the *Land Acquisition (Just Terms Compensation) Act 1991.* Additionally, there are cost benefits to the NSW Government and councils where land is secured early in the development phase when the cost of the land is significantly lower compared to when the development of the area is well advanced. It is for these reasons that an IDA for the provision of land must:

- demonstrate value for money compared to other acquisition methods
- provide for delivery before cost escalation or land fragmentation occurs
- not be for land that is not part of a major rezoning proposal, where a SVPA is considered more appropriate.

In considering an IDA for the dedication of land, the Department will commission an independent land valuation to confirm the land's market value.

Criteria 2.2: Cost and time efficiency of works

In considering an IDA for the delivery of works, the department will work with other state agencies to confirm the value of the infrastructure. The applicant must also outline and commit to a delivery schedule for the proposed assets.

Principle 3: Offsets can apply to multiple stages of a single development; however surplus offsets cannot be applied to other developments

Criteria 3.1: Application of offset credits

IDAs can result in infrastructure assets being contributed at an earlier stage than when a monetary contribution under a RIC falls due. Under these circumstances, offsets generated through the direct dedication of land or works will result in a 'credit' balance existing between the value of the infrastructure assets dedicated and the value of the applicable RIC contribution. Developers can draw on these credits to meet their RIC obligations in later stages as the development progresses.

Alternatively, IDAs may propose for infrastructure assets to be dedicated at a later stage of the development. Here, developers may seek to defer RIC obligations, securing these obligations through the provision of bank guarantees, until such time as the infrastructure assets are dedicated.

This ability to forward fund, defer, and progressively draw down on offsets generated from the direct dedication of infrastructure over multiple stages of a development gives developers certainty of cashflow and supports the alignment of infrastructure with development for the benefit of the broader community.

Although offsets can be applied to multiple stages of a single development, residual offsets remaining at the completion of the development subject to the IDA will not be transferrable to other development sites. This is to ensure that the principles of the RIC Framework are upheld.

For IDAs to achieve the intended benefits, there must be clear guidelines and consistently applied procedures underpinning their operation. The department will publish detail guidance on IDAs, including detailed principles, governance and criteria.

Table 1. Summary of draft principles and criteria for IDAs within the RIC Framework

Principle	Criteria
1. Reflects state-endorsed infrastructure priorities and aligns with other development and infrastructure plans	1.1 Infrastructure or land is identified as part of the Growth Infrastructure Needs Assessment Longlist. 1.2 Infrastructure or land is a priority and complements other investment in the area/other state agencies' works programs or supports the staged delivery of planned infrastructure.
2. Achieves time and/or cost delivery efficiencies	2.1 Land required for state or regional infrastructure, offered at or below market value, and is provided early in the planning and development phase. 2.2 Achieves better cost and/or time outcomes than if the infrastructure was delivered by state government.

Principle	Criteria
3. Surplus offsets cannot be applied to other development	3.1 If the actual value of the dedicated infrastructure assets exceeds the RIC obligation, residual offsets remaining at the completion of the development subject to the IDA will not be transferrable to other development sites.

Other considerations

Further requirements for IDAs within the RIC Framework include:

- All work and land secured through an IDA is to meet the needs and be delivered to the design requirements and specifications of the end user.
- Works or land provided instead of the RIC can only be used as an alternative to monetary contributions for the element of the RIC charge to which it applies. For example:
    a. Land provided for strategic biodiversity purposes can only be offset against that component of the charge.
    b. The cost of a regional development infrastructure item (or land) can only be offset against the Regional Infrastructure Contribution (Base Contribution).

The IDA process is outlined below.

1	**Submission of IDA offer**	Offer nominates project from the Infrastructure Needs Assessment Longlist	Details value of the offer, delivery timeframes and responds to the Principles and Criteria
2	**Assessment of IDA offer**	DPIE undertakes assessment of the proposal	Consultation with interagency committee for endorsement
3	**Drafting and finalising IDA Deed**	DPIE finalises the terms and draft the IDA Deed	
4	**Execution**	The proponent and Minister of Planning and Public Spaces execute the IDA	DPIE liaises with Council as to the IDA and relationship with RIC obligations
5	**Administration and conclusion**	The proponent delivers contributions the item in line with the agreement	Resolution of RIC obligations through certification

Figure 1. Infrastructure Delivery Agreement pathway

Existing works-in-kind (WIK) within RIC SEPP regions

Special Infrastructure Contributions works-in-kind agreements (SIC WIKAs) that have been executed within a RIC State Environmental Planning Policy region before 1 July 2022, will continue to operate as per the entitlements granted under the agreement. This means:

- where work or the dedication of land is yet to be completed, the terms of that WIK agreement will be honoured, including works completed or land dedicated after 1 July 2022, and/or
- where an agreement permits, the ability to generate, draw down on or transfer accumulated offset credits will continue, with established offset credits to be carried over into the RIC Framework.

This will ensure there is no double-charging of State infrastructure contributions in a RIC State Environmental Planning Policy region which is subject to a SIC WIKA.

It is proposed that offsets accrued under an existing Special infrastructure Contributions determination (SIC) through a SIC WIKA will be recognised and transferred under the RIC Framework. This will allow SIC offset holders to satisfy RIC obligations through a drawdown of these credits. The department will make details of these offset arrangements publicly available on the NSW Planning Portal to ensure transparency, and help NSW Treasury and infrastructure delivery agencies understand outstanding obligations to inform infrastructure planning.

Difference between State Planning Agreements and IDAs

When the RIC State Environmental Planning Policy is implemented, State Planning Agreements will also be available as a mechanism for dedicating infrastructure assets. While an IDA is a mechanism to meet a RIC obligation for a specific development, State Planning Agreements will predominately be used for infrastructure required as a result of amendment to an environmental planning instrument, such as rezoning of land. State Planning Agreements may include the infrastructure not identified as part of the Growth Infrastructure Needs Assessment. For more information please refer to the *Guidelines for State Planning Agreements*.

Figure 2. Summary of the differences between Infrastructure Delivery Agreements (IDAs) and SPAs

IDAs

- Infrastructure identified in the RIC Fund Growth Infrastructure Needs Assessment
- Predominantly entered into prior to Development Consent
- Generate RIC offsets

SPAs

- Flexibility in the infrastructure to be delivered or funded
- Predominantly entered into prior to rezoning
- Excluded from the application of the RIC

Continued delivery of infrastructure funded by SIC and SPA revenue

While the contribution framework transitions toward the RIC, any SPA or SIC revenue collected or to be collected will continue to be invested in state and regional infrastructure. This includes the disbursement of SIC revenue to committed projects that support the release of new housing and employment lands in these areas.

Approvals and next steps

The department will manage and assess IDAs with approval from committees within the RIC Fund Governance Framework.

The department will continue refining the IDA policy framework based on feedback from its exhibition. To ensure IDAs meet the NSW Government's objectives and can be enabled from 1 July 2022, the Department will:

- establish the initial Growth Infrastructure Needs Assessment to make clear which items can be proposed.
- publish:
  - the detailed *Guidelines for RIC Fund Investment Prioritisation* under which IDA applications will be assessed
  - guidelines for IDA application and assessment processes
  - guidance on the department's land valuation methodology.
- implement a NSW Planning Portal-enabled concurrence and referral mechanism so developers can propose IDAs and the department can notify councils of them.