Ordinary Council Meeting

Councillors,

In accordance with section 367 of the Local Government Act, 1993 notice is hereby given that an Ordinary Council Meeting will be held on:

**DATE:** Tuesday 28 August 2018

**TIME:** 5.30pm

**VENUE:** Council Chambers
2nd Floor
City Hall
290 King Street
Newcastle  NSW  2300

J Bath
Chief Executive Officer

City Administration Centre
282 King Street
NEWCASTLE  NSW  2300

21 August 2018

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FOR DOCUMENTS MARKED 'DISTRIBUTED UNDER SEPARATE COVER' REFER TO COUNCIL’S WEBSITE AT www.newcastle.nsw.gov.au

NOTE: ITEMS MAY NOT NECESSARILY BE DEALT WITH IN NUMERICAL ORDER
CONFIRMATION OF PREVIOUS MINUTES

MINUTES - PUBLIC VOICE COMMITTEE 17 JULY 2018

RECOMMENDATION

The draft minutes as circulated be taken as read and confirmed.

ATTACHMENTS

Attachment A: 180717 Public Voice Committee Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
CITY OF NEWCASTLE

Minutes of the Public Voice Committee Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on 17 July 2018 at 5.33pm.

PRESENT
The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn, J Mackenzie, A Robinson, A Rufo and P Winney-Baartz.

IN ATTENDANCE
J Bath (Chief Executive Officer), A Jones (Interim Director Governance), K Liddell (Director Infrastructure and Property and Interim Director Strategy and Engagement), S Gately (Interim Director City Wide Services), E Kolatchew (Interim Manager Legal), P McCarthy (Interim Manager Regulatory and Assessment), J Gaynor (Manager Corporate and Community Planning), G Douglass (Interim Manager Development and Building), C Field (Executive Officer, Lord Mayor's Office), M Murray (Policy Officer, Lord Mayor's Office), A Knowles (Council Services/Minutes) and K Sullivan (Council Services/Webcast).

MESSAGE OF ACKNOWLEDGEMENT
The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

PRAYER
The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

APOLOGIES

MOTION
Moved by Cr Church, seconded by Cr Rufo

The apologies submitted on behalf of Councillors Elliott, Luke and White be received and leave of absence granted.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS
Nil.

PUBLIC VOICE SESSIONS

ITEM-1 DA2018/00066 - 90 SCOTT STREET NEWCASTLE - ALTERATIONS AND ADDITIONS TO DWELLING

Mrs Diane Kinloch and Mr Anthony Ventura, Ventura Lawyers addressed Council and outlined their concerns and objections to the development application.

Councillor Dunn declared a non-pecuniary interest in Item 1 - DA2018/00066, 90 Scott Street Newcastle as he had a client that owned a property nearby to the subject property and left the Chamber for the remainder of the session.
Mr Gregory Cahill on behalf of the DA applicant responded to the objectors concerns in support of the development application.

Councillor Dunn returned to the Chamber at the conclusion of Public Voice.

The meeting concluded at 6.14pm
MINUTES - BRIEFING COMMITTEE 17 JULY 2018

RECOMMENDATION

The draft minutes as circulated be taken as read and confirmed.

ATTACHMENTS

Attachment A: 180717 Briefing Committee Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
The apologies submitted on behalf of Councillors Elliott, Luke and White be received and leave of absence granted.  

Carried

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Nil.

BRIEFING COMMITTEE REPORTS

ITEM-4  BR 17/07/18 - NEWCASTLE POPULATION FORECASTS 2016-2041

Mr Ryan James, Client Consultant from Profile.id provided a briefing to Council on Newcastle population forecast data.  

The meeting concluded at 6.51pm.
MINUTES - ORDINARY COUNCIL MEETING 24 JULY 2018

RECOMMENDATION

The draft minutes as circulated be taken as read and confirmed.

ATTACHMENTS

Attachment A: 180724 Ordinary Council Meeting Minutes

Note: The attached minutes are a record of the decisions made by Council at the meeting and are draft until adopted by Council. They may be viewed at www.newcastle.nsw.gov.au
CITY OF NEWCASTLE

Minutes of the Ordinary Council Meeting held in the Council Chambers, 2nd Floor City Hall, 290 King Street, Newcastle on Tuesday 24 July 2018 at 5.34pm.

PRESENT
The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn, K Elliott, B Luke, J Mackenzie, A Robinson, A Rufo, E White and P Winney-Baartz.

IN ATTENDANCE
J Bath (Chief Executive Officer), A Jones (Interim Director Governance), K Liddell (Director Infrastructure and Property / Interim Director Strategy and Engagement), F Leatham (Interim Director People and Culture), S Gately (Interim Director City Wide Services), E Kolatchew (Interim Manager Legal), K Hyland (Manager Major Events and Corporate Affairs), P McCarthy (Interim Manager Regulatory and Assessment), J Rigby (Interim Manager Assets and Projects), J Cleare (Interim Manager Property), I Challis (Manager Projects and Contracts), B Johnson (Communications Manager), C Field (Executive Officer, Lord Mayor's Office), M Murray (Policy Officer, Lord Mayor's Office), K Sullivan (Council Services/Minutes) and A Knowles (Council Services/Webcasting).

MESSAGE OF ACKNOWLEDGEMENT
The Lord Mayor read the message of acknowledgement to the Awabakal and Worimi peoples.

PRAYER
The Lord Mayor read a prayer and a period of silence was observed in memory of those who served and died so that Council might meet in peace.

APOLOGIES
Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor Luke
Councillor Luke declared a non-pecuniary less than significant conflict of interest in Item 65 - Executive Monthly Performance Report as it included the re-investment Surplus Funds Report which mentions multiple financial institutions that he had dealings with in his business. The declaration is less than significant as he noted he was not involved in determining where funds are invested and was just receiving a report.

Councillor Clausen
Councillor Clausen declared a less than significant non-pecuniary interest in Lord Mayoral Minute Item 13 - National Second City Policy Framework Development stating that his employer was involved and would remain in the Chamber for discussion on the item.
Councillor Clausen
Councillor Clausen declared a less than significant non-pecuniary interest in Item 68 - Adoption of the Newcastle Coastal Zone Management Plan (Revised 2018) - Stockton and Coastline South of the Harbour stating that his employer was involved and would remain in the Chamber for discussion on the item.

Councillor Dunn
Councillor Dunn declared a less than significant non-pecuniary interest in Item 68 - Adoption of the Newcastle Coastal Zone Management Plan (Revised 2018) - Stockton and Coastline South of the Harbour stating that he owned property in the Stockton area and would remain in the Chamber for discussion of the item.

Councillor Dunn
Councillor Dunn declared a significant non-pecuniary interest in Notice of Motion Item 18 - Newcastle Light Rail Small Business Assistance which was due to his employment. He removed himself for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - ORDINARY COUNCIL MEETING 26 JUNE 2018

MOTION
Moved by Cr Mackenzie, seconded by Cr Byrne

The draft minutes as circulated be taken as read and confirmed.  

Carried

LORD MAYORAL MINUTE

ITEM-11  LMM 24/07/18 - OUR FAIR SHARE OF SNOWY SALE

MOTION
Moved by Lord Mayor, Cr Nelmes

That Council:

1  Notes that the Federal Government is proposing to purchase the NSW Government’s share of the Snowy Hydro Scheme for $4.15 billion. Notes that on 27 June 2018 the NSW Government legislated the Snowy Hydro Legacy Fund Act 2018 which specifically quarantines the proceeds of the Snowy Hydro Sale for investment in regional infrastructure outside of the metropolitan areas of Sydney, Wollongong and Newcastle.

2  Notes the letter from the NSW Government’s representative for the Hunter, Parliamentary Secretary Scot MacDonald MLC, published in the Newcastle Herald on 9 July 2018 indicates that: “[N]o worthwhile, productive project should be excluded from consideration just because it touches on an excluded metro council area. Inevitably major infrastructure projects have a large footprint and cross over multiple local government areas.”
3 Produces a feasibility report identifying projects from Council’s 2018 NSW Budget submission which meet the requirements and eligibility criteria to apply for funding under the Snowy Hydro Legacy Fund Act 2018 (including specific assessment of the Lower Hunter freight rail corridor between Fassifern and Hexham, Newcastle Airport expansion, the expansion of the Light Rail network, Newcastle Port diversification, and Broadmeadow Sports and Entertainment Precinct) and collaborates with the Greater Newcastle Metropolitan Plan Standing Committee of the Hunter Joint Organisation (JO) to pursue regional collaboration on identified integrated and accessible transport networks.

4 Upon endorsement of the feasibility report, applies for funding under the Snowy Hydro Legacy Fund Act 2018 and writes to the NSW Premier, NSW Deputy Premier and Parliamentary Secretary MacDonald requesting consideration of Council’s identified and endorsed infrastructure projects aimed at delivering significant benefits to the City of Newcastle and the broader region.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Byrne, Church, Clausen, Duncan, Dunn, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Councillor Elliott.

Carried

ITEM-12 LMM 24/07/18 - BICENTENARY OF THE LAYING OF THE MACQUARIE PIER FOUNDATION STONE

MOTION
Moved by Lord Mayor, Cr Nelmes

That Council:

1 Notes that 5 August 2018 marks 200 years since the laying of the Macquarie Pier Foundation Stone, marking the beginning of construction works for the Macquarie Pier;

2 Acknowledges that Macquarie Pier was proposed to connect Coal Island (later Nobbys Island, now Nobbys Head) with the mainland, creating a safer passageway for ships coming into Newcastle Harbour that would often get caught on Stockton’s oyster banks;

3 Notes that the construction of Macquarie Pier significantly shaped the landscape of colonial Newcastle, forming Nobbys Beach and surrounds, Nobbys Breakwall as well as ensuring safer passage into Coal River, now known as the Hunter River;

4 Establishes a working party with representatives from Council, the Port of Newcastle, the Port Authority of NSW, NSW Roads and Maritime Services, NSW Office of Environment and Heritage, the University of Newcastle’s Hunter Living Histories Group, Parks and Playgrounds Inc. and the Coal River Working Party to explore opportunities to recognise significant milestones that should be marked regarding the history and heritage of the Coal River Precinct, including Macquarie Pier.
5 Marks the Bicentenary of the laying of the Macquarie Pier Foundation Stone on 5 August 2018 with an event about the significance of the Macquarie Pier to the City of Newcastle’s history and heritage.

Carried unanimously

ITEM-13 LMM 24/07/18 - NATIONAL SECOND CITY POLICY FRAMEWORK DEVELOPMENT

MOTION
Moved by Lord Mayor, Cr Nelmes

That Newcastle City Council:

1 Notes that the Committee for Geelong is calling for Expressions of Interest – Scope Development from National Second Cities, to assist in the development of a proposed National Second City Policy Framework;

2 Re-affirms the City of Newcastle’s status as a Second City of New South Wales;

3 Notes that following the City of Newcastle Second Cities Roundtable a delegation from Newcastle, including from the University of Newcastle, Hunter Research Foundation Centre, Port of Newcastle and Newcastle based Commonwealth Bank representatives are currently in Geelong for the launch of the national call for a Second Cities policy.

4 Supports a partnership with the Committee of Geelong in the development of a proposed National Second City Policy Framework with a $25,000 contribution towards the research report, noting the collaboration includes the City of Wollongong who has resolved to support the development of a proposed National Second City Policy Framework and will make a financial contribution to this project;

5 Supports, in principle, a partnership with the University of Newcastle to deliver the Second Cities Symposium being planned for 3-5 October 2018, in the City of Newcastle (Attachment B).

Carried unanimously

REPORTS BY COUNCIL OFFICERS

ITEM-65 CCL 24/07/18 - EXECUTIVE MONTHLY REPORT

MOTION
Moved by Cr Clausen, seconded by Cr Mackenzie

The report be received.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Byrne, Clausen, Duncan, Dunn, Mackenzie, Luke, White and Winney-Baartz.

Against the Motion: Councillors Church, Elliott, Robinson and Rufo.

Carried
ITEM-66  CCL 24/07/18 - ADOPTION OF GLEBE RD FEDERATION COTTAGES HERITAGE CONSERVATION AREA - AMENDMENT TO NEWCASTLE LEP 2012 AND NEWCASTLE DCP 2012

MOTION
Moved by Cr Duncan, seconded by Cr Mackenzie

Council resolves to:

i) Endorse the attached Planning Proposal (Attachment A), prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act), to amend the LEP to create a Heritage Conservation Area for the Glebe Road Federation Cottages on the following land:
   a) Lot 1 DP 7356435, Lots 10 DP 1049694, Lot 1 DP 1188026, Lot 0 SP 0053274, and Lots 112 to 117 and 120 to 121 DP 95005, Nos 53 - 75 Glebe Road, The Junction.
   b) Lot 11 DP 1049694, 4 Watkins Street, The Junction.

ii) Forward the Planning Proposal to the Department of Planning and Environment (DPE) requesting that a draft LEP be prepared and made pursuant to Section 3.36(1) of the EP&A Act.

iii) Advise the Secretary of the Department of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 3.36(1) of the EP&A Act.

iv) Adopt Section 6.02 Heritage Conservation Areas (Attachment B) of the DCP and provide public notice advising that this development control plan take effect on the business day following the date upon which the abovementioned amendment to the LEP is made.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Councillor Luke.

Carried
ITEM-67  CCL 24/07/18 - HAMILTON RESIDENTIAL PRECINCT HERITAGE CONSERVATION AREA - ENDORSEMENT OF AMENDMENT TO NEWCASTLE LEP 2012

MOTION
Moved by Cr Duncan, seconded by Cr Mackenzie

Council resolves to:

i)   Endorse the attached Planning Proposal (Attachment A), prepared in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979 (EP&A Act), to amend the LEP to create a Heritage Conservation Area for the Hamilton Residential Precinct.

ii)  Forward the Planning Proposal to the Minister for Planning for Gateway determination pursuant to Section 3.34 of the EP&A Act.

iii) Advise the Secretary of the Department of Planning and Environment that Council does not seek to exercise delegations for undertaking Section 3.36(1) of the EP&A Act.

iv)  Consult with the community and relevant government agencies as instructed by the Gateway determination.

v)   Place draft Section 6.02 Heritage Conservation Areas (Attachment B) of the DCP on public exhibition for a minimum period of 28 days, concurrently with the Planning Proposal.

vi)  Receive a report back on the Planning Proposal and draft Development Control Plan guidelines as per the requirements of Section 3.34 of the EP&A Act.

For the Motion:  Lord Mayor, Cr Nelmes, Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion:  Councillor Luke.

Carried
ITEM-68  CCL 24/07/18 - ADOPTION OF THE NEWCASTLE COASTAL ZONE MANAGEMENT PLAN (REVISED 2018) - STOCKTON AND COASTLINE SOUTH OF THE HARBOUR

MOTION
Moved by Cr White, seconded by Cr Robinson

Council adopts the draft Newcastle Coastal Zone Management Plan 2018 (Attachment A) and endorses submission of the Plan to the Office of Environment and Heritage for certification under the Coastal Protection Act 1979.

For the Motion: Lord Mayor, Cr Nelmes, Councillors Byrne, Church, Clausen, Duncan, Dunn, Elliott, Luke, Mackenzie, Robinson, Rufo, White and Winney-Baartz.

Against the Motion: Nil.

Carried unanimously

NOTICES OF MOTION

ITEM-16 NOM 24/07/18 - LAMBTON PARK MEMORIAL GATES - TIME CAPSULE

MOTION
Moved by Cr Rufo, seconded by Cr Clausen

That Council:

- Acknowledges the contribution of community historian Robert Watson, who is a member of the Lambton Residents Group, in researching the history of the World War I (WWI) Memorial Gates in Lambton Park, and in particular the burying of a time capsule beneath them on 19 October 1918.
- Notes the work conducted by Council staff in facilitating a heritage and engineering assessment of the Gates.
- Supports the proposal to unearth the Time Capsule and hold a ceremony commemorating the event on or around 19 October 2018.
- Supports the sourcing of grant funds from the State and Federal Governments towards the removal of the time capsule, the burying of a new time capsule, and celebratory centennial event.
- Establishes a working group to further develop and progress the both the removal of the original time capsule and burying of a new time capsule, including completion of the heritage and engineering assessments, determination of costs involved, securing of necessary funding, and organisation of the celebratory event. Membership of the Committee to include Ward 3 Councillors, Council staff nominated by Newcastle City Council's Chief Executive Officer, two representatives from the Lambton Residents’ Group, a representative from the Lambton New Lambton RSL Sub-Branch and other members as required.

Carried unanimously
ITEM-17 NOM 24/07/18 - SANDSTONE MEGAREGION

MOTION
Moved by Cr Clausen, seconded by Cr White

That Council:

1. Notes the release of the Committee for Sydney’s Sandstone Megaregion Report, developed by its Steering Committee Chair Kyle Loades (former President of the NRMA) and Professor Paul Wellings CBE (Vice Chancellor of the University of Wollongong) which advocates for transport and economic development planning across the three Cities of Sydney, the City of Wollongong and the City of Newcastle.

2. Endorses the Report’s recommendations, namely that the “NSW Government investigate fast rail and a 70-minute connection between Sydney and Newcastle”, and notes that in March 2018 the Federal and NSW Governments jointly announced $6 million to investigate faster trains from Newcastle to Sydney to cut the journey from three hours to two.

3. Writes to the Prime Minister, NSW Premier, Federal Minister for Urban Infrastructure and Cities, NSW Minister for Transport and Infrastructure, and NSW Minister for Planning requesting that the committed Federal/NSW Government ‘faster train’ investigation also consider the business case of a 70 minute or less rail journey between Newcastle and Sydney.

Carried unanimously

ITEM-18 NOM 24/07/18 - NEWCASTLE LIGHT RAIL SMALL BUSINESS ASSISTANCE

Councillor Dunn declared a significant non-pecuniary interest in Notice of Motion Item 18 - Newcastle Light Rail Small Business Assistance and retired from the Chamber for discussion on the item.

MOTION
Moved by Cr Church, seconded by Cr Elliott

That Newcastle City Council

1. Notes that many small businesses along the Light Rail route in Newcastle have suffered financial hardship as a result of construction reducing access.

2. Provides approval to Newcastle Business Improvement Association to use funds received from Council to deliver financial assistance to businesses as detailed in the small business assistance program attached as an addendum to this motion.
3. Commits to the release of $100,000 from the restricted funds held in reserve by Council on behalf of Newcastle Business Improvement Association to provide immediate assistance to eligible businesses impacted by the Light Rail construction.

4. Commits a further $100,000 of Council funds in support of the small business assistance program attached as an addendum to this motion (Attachment A).

**PROCEDURAL MOTION**
Moved by Cr Church, seconded by Cr Elliott

The matter lay on the table pending the investigation into Newcastle Now BIA announced by the Chief Executive Officer over the weekend.

The procedural motion moved by Councillor Church and seconded by Councillor Elliott was put to the meeting and voting resulted in a tie.

The Lord Mayor exercised the casting vote and declared the procedural motion defeated.

**Defeated**

Councillor Clausen gave notice of a foreshadowed motion.

The motion moved by Councillor Church and seconded by Councillor Elliott was put to the meeting.

**Defeated**

**MOTION**
Moved by Cr Clausen, seconded by Cr Winney-Baartz

That Council

Notes that Council has previously resolved to support Newcastle businesses experiencing financial hardship due to light rail constructions by offering a rate reduction and that this support was publicly exhibited and adopted as part of Council's 2018/19 Budget.

Supports the suspension of funding to Newcastle NOW Business Improvement Association pending the outcome of the Independent Investigation.

Requests that the CEO takes steps to ensure that local business support is maintained, and reviews options to continue to make available funding for activities that comply with the Act such as events, projects and activities that promote, beautify or develop the city centre.
ITEM-19 NOM 24/07/18 - COMPASSIONATE COMMUNITIES

MOTION
Moved by Cr Byrne, seconded by Cr Winney-Baartz

That Council:

• Notes that the City of Newcastle has been nominated by the Groundswell Project to be one of eight ‘groundbreakers’ regarding the establishment of ‘Compassionate Communities’ across Australia;

• Recognises the establishment of the Newcastle Compassionate Communities Collaboration, a cross-sector collaborative aimed at supporting all sectors of our community to reduce the negative social, psychological and medical impact of serious illness, caregiving and bereavement; and

• Reviews the Compassionate Cities Charter and provides a report to Councillors at the August Ordinary Council Meeting regarding the benefits of the City of Newcastle ratifying the Charter and joining the Newcastle Compassionate Communities Collaboration.

Carried unanimously

ITEM-20 NOM 24/07/18 - REDUCING VIOLENCE AGAINST WOMEN AND CHILDREN - A CITY POSITION

MOTION
Moved by Cr Duncan, seconded by Cr Winney-Baartz

That Council notes that violence against women and their children is a significant issue in Australia and that local government has a genuine role to play in reducing it.

That Council develops a policy for the City of Newcastle which states that Newcastle strives to be a safe place for all women and children and takes a proactive leadership role in preventing violence against women and children including urban design, development processes and staff and community education.
• That Council implements relevant initiatives of the National Plan to Reduce Violence Against Women and their Children.

• That Council further support, promote and encourage adoption of relevant initiatives from the Plan across our community.

Carried unanimously

REPORTS BY COUNCIL OFFICERS

ITEM-69 CCL 24/07/18 - RELOCATION OF COUNCIL CHAMBER TO 12 STEWART AVENUE (FORMER CONFIDENTIAL ITEM 14 - RELOCATION OF COUNCIL CHAMBER TO 12 STEWART AVENUE)

PROCEDURAL MOTION
Moved by Cr Mackenzie, seconded by Cr Clausen

Council discuss Confidential Item 14 - Relocation of Council Chamber to 12 Stewart Avenue in open session and that in accordance with Section 10(A)(2)(c) of the Local Government Act 1993, Council maintains confidentiality on Paragraphs 7 and 12 of the Officer's report as the information would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposed to conduct) business.

Carried

MOTION
Moved by Lord Mayor, Cr Nelmes, seconded by Cr Clausen

1 Council resolves to relocate the Council Chamber to 12 Stewart Avenue, Newcastle West.

2 Council grant authority to the Chief Executive Officer or his delegate to finalise arrangements for the design, fit-out, and relocation of the Council Chamber in consultation with a working group of Council representation (including the Lord Mayor, Deputy Lord Mayor and Councillor Mackenzie).

3 Commence the process to protect City Hall and the Council Chamber on the State Heritage Register.

Carried
CONFIDENTIAL REPORTS

ITEM-15 CON 24/07/18 - TENDER FOR STOCKTON BEACH HOLIDAY PARK MANAGEMENT SERVICES

PROCEDURAL MOTION
Moved by Cr Mackenzie, seconded by Cr Winney-Baartz

Council move into confidential session for the reasons outlined in the business papers.

Carried

Council moved into confidential session at 8.35pm.

PROCEDURAL MOTION
Moved by Cr Rufo, seconded by Cr White

Council move back into open session.

Carried

Council reconvened at 8.38pm and the Chief Executive Officer reported the resolutions of confidential session.

MOTION
Moved by Cr Mackenzie, seconded by Cr White


2 This confidential report relating to the matters specified in section 10A(2)(d) of the Local Government Act 1993 be treated as confidential and remain confidential until Council determines otherwise.

Carried

The meeting concluded at 8.39pm.
REPORTS BY COUNCIL OFFICERS

ITEM-70 CCL 28/08/18 - FINANCIAL STATEMENTS FOR THE YEAR ENDED 30 JUNE 2018 TO BE REFERRED TO COUNCIL’S AUDITOR

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM CHIEF FINANCIAL OFFICER

PURPOSE

Council’s Financial Statements for the year ended 30 June 2018 must be prepared and referred to the Council’s auditors, NSW Audit Office, for audit in accordance with section 413 of the Local Government Act 1993 (Act).

RECOMMENDATION

1 That Council notes the preparation of its Financial Statements for the year ended 30 June 2018 are underway and upon completion they will be referred for audit in accordance with the requirements of s.413(1) of the Act.

2 Council authorises the Lord Mayor, a Councillor, the Chief Executive Officer and the Responsible Accounting Officer to sign the relevant statements in accordance with s.413(2)(c) of the Act at the conclusion of the external audit.

KEY ISSUES

3 Council is required under s.413(1) of the Act to prepare Financial Statements each year and refer them for audit. Section 413(2)(c) of the Act requires that the Financial Statements must include:

i) A General Purpose Financial Statement;

ii) Any other matter prescribed by the regulations; and

iii) A statement in the approved form by the Council as to its opinion on the General Purpose Financial Statements and Special Purpose Financial Statements (Attachments A and B).

4 Attached to this report are the statements which the Lord Mayor, a Councillor, the Chief Executive Officer and the Responsible Accounting Officer must sign in accordance with s.413(2)(c) of the Act, to confirm that the Financial Statements have been prepared in accordance with the applicable legislation, regulations, accounting standards and reporting codes.

5 The audit will commence on 10 September 2018. When the audit is finalised a full report will be made to Councillors, as soon as practicable, detailing all the relevant findings together with the auditors' opinion on the financial statements.
6 In accordance with s.416(1) of the Act, the audit of the Financial Statements must be completed and a copy of those Financial Statements, together with the signed statements in accordance with the recommendation at Paragraph 2 must be provided to the Office of Local Government by no later than 31 October 2018. The Office of Local Government has written to Council emphasising the necessity to meet this timeframe.

7 In accordance with s.419 of the Act, Council will present signed Financial Statements for the year ended 30 June 2018 at the Ordinary Council Meeting to be held on 23 October 2018.

8 From 24 October 2018 to 30 October 2018, under s.420 of the Act, members of the public can make submissions to Council with respect to Council’s audited Financial Statements or Council’s Auditors Report.

FINANCIAL IMPACT

9 The Council’s Operational Plan includes a budget amount of $128,050 for the cost of the external audit of the 2017/18 Financial Statements. The current cost estimate provided by the auditors is $119,000.

COMMUNITY STRATEGIC PLAN ALIGNMENT

10 This report aligns to the Community Strategic Plan under the strategic direction of ‘Open and collaborative leadership’ In particular 7.1b Ensure long-term financial sustainability through short, medium and long-term financial planning.

IMPLEMENTATION PLAN/IMPLICATIONS

11 This matter has no specific policy implications for Council however the legislative deadlines and the proposed timeline for the completion of the audit of the Financial Statements are as follows:

   i) 28 August 2018 – Council authorises the relevant statements to be signed in accordance with the recommendation at Paragraph 2 above.

   ii) 10 September 2018 – External Audit commences.

   iii) 11 October 2018 - Draft Financial Statements provided to Audit and Risk Committee for review.

   iv) 16 October 2018 – Closed Councillor Workshop on draft Financial Statements for the year ended 30 June 2018 undertaken by Council officers with the external audit partner in attendance.

   v) 23 October 2018 – Completed signed Financial Statements and audit report for the year ended 30 June 2018 to be presented at the Ordinary Council Meeting to be held on 23 October 2018.

   vi) 31 October 2018 – Final date for Financial Statements for the year ended 30 June 2018 to be submitted to the Office of Local Government and the Australian Bureau of Statistics in accordance with s.417(5) of the Act.
12 The external auditors have presented their schedule and provided an update on the audit plan and their progress to the Audit and Risk Committee at their meeting held on 1 February 2018. The external auditors will provide a further update to the Committee at the forthcoming meeting to be held on 11 October 2018. The draft Financial Statements will be presented to Councillors at a closed workshop to be held on 16 October 2018.

RISK ASSESSMENT AND MITIGATION

13 There is a risk that the Council’s Financial Statements may not have been prepared in accordance with the relevant legislation. This risk is mitigated by ensuring that the Financial Statements are referred to the Council's external auditors, The NSW Audit Office, for audit in accordance with s.413 of the Act.

RELATED PREVIOUS DECISIONS

14 At the Ordinary Council Meeting held on 21 August 2017 Council resolved to authorise the Lord Mayor, a Councillor, the Interim Chief Executive Officer and the Responsible Accounting Officer to sign the relevant statements in accordance with s.413(2)(c) of the Act at the conclusion of the external audit.

CONSULTATION

15 Not applicable.

BACKGROUND

16 This report and its associated approval by way of Council resolution will ensure that the Statement by Councillors and Management made pursuant to the s.413(2)(c) of the Act is approved and signed by the relevant parties in order to complete the process for lodgment of the audited Financial Statements with the Office of Local Government by 31 October 2018.

OPTIONS

Option 1

17 The recommendation as at Paragraphs 1 and 2 in order to ensure compliance with s.413 of the Act. This is the recommended option.

Option 2

18 The recommendations as at Paragraphs 1 and 2 are not endorsed. This will result in a breach of s.413 of the Act. This is not the recommended option.
REFERENCES

ATTACHMENTS

Attachment A: Statement by Councillors and Management made pursuant to the s.413(2)(c) of the Act – General Purpose Financial Statements for the year ended 30 June 2018.

Attachment B: Statement by Councillors and Management made pursuant to the s.413(2)(c) of the Act - Special Purpose Financial Statements for the year ended 30 June 2018.
Newcastle City Council

General Purpose Financial Statements
for the year ended 30 June 2018

Statement by Councillors and Management
made pursuant to Section 413(2)(c) of the Local Government Act 1993 (NSW) (as amended)

The attached General Purpose Financial Statements have been prepared in accordance with:
- the Local Government Act 1993 (NSW) (as amended) and the regulations made thereunder,
- the Australian Accounting Standards and other pronouncements of the Australian Accounting Standards Board

To the best of our knowledge and belief, these financial statements:
- present fairly the Council’s operating result and financial position for the year,
- accord with Council’s accounting and other records.

We are not aware of any matter that would render these statements false or misleading in any way.

Signed in accordance with a resolution of Council made on 28 August 2018.

Natalie Nelmes  
Lord Mayor

Councillor

Councillor

Jeremy Bath  
Chief Executive Officer

Responsible Accounting Officer

Responsible Accounting Officer
Newcastle City Council

Special Purpose Financial Statements
for the year ended 30 June 2018

Statement by Councillors and Management
made pursuant to the Local Government Code of Accounting Practice and Financial Reporting

The attached Special Purpose Financial Statements have been prepared in accordance with:

- the NSW Government Policy Statement ‘Application of National Competition Policy to Local Government’;
- the Local Government Code of Accounting Practice and Financial Reporting,
- the NSW Office of Water Best-Practice Management of Water and Sewerage Guidelines.

To the best of our knowledge and belief, these financial statements:

- present fairly the operating result and financial position for each of Council’s declared business activities for the year, and
- accord with Council’s accounting and other records.

We are not aware of any matter that would render these statements false or misleading in any way.

Signed in accordance with a resolution of Council made on 28 August 2018.

Niall Neimes
Lord Mayor

Councillor

Jeremy Bath
Chief Executive Officer

Responsible Accounting Officer
ITEM-71  CCL 28/08/18 - EXECUTIVE MONTHLY PERFORMANCE REPORT

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM CHIEF FINANCIAL OFFICER

PURPOSE

To report on Council’s monthly performance. This includes:

a) Monthly financial position and year to date (YTD) performance against the 2018/19 Operational Plan as at the end of July 2018.

b) Investment of temporary surplus funds under section 625 of the Local Government Act 1993 (Act), submission of report in accordance with the Act and clause 212 of the Local Government (General) Regulation 2005 (Regulation).

RECOMMENDATION

1 The executive monthly performance report for July 2018 be received.

KEY ISSUES

2 At the end of July 2018 the consolidated YTD actual operating position is a surplus of $2.9m which represents a positive variance of $2.2m against the budgeted YTD surplus of $0.7m. This budget variance is due to a combination of income and expenditure variances which are detailed in Attachment A. The full year adopted budget for 2018/19 is a surplus of $6.5m.

3 The net funds generated as at the end of July 2018 is a surplus of $6m (after capital revenues, expenditure and loan principal repayments). This is a positive variance to the YTD budgeted surplus of $2.4m. This is primarily due to a timing variance in the delivery of Council’s works program with a higher amount of project expenditure (both capital and operational expenditures) expected to be incurred during the final quarter of the financial year.

4 Council’s temporary surplus funds are invested consistent with Council’s Investment Policy, Investment Strategy, the Act and Regulations. Details of all Council funds invested under s. 625 of the Act are provided in the Investment Policy and Strategy Compliance Report (section 4 of Attachment A).

FINANCIAL IMPACT

5 The variance between YTD budget and YTD actual results at the end of July 2018 is provided in the Executive Monthly Performance Report (Attachment A).
COMMUNITY STRATEGIC PLAN ALIGNMENT

6 This report aligns to the Community Strategic Plan under the strategic direction of ‘Open and collaborative leadership’ action 7.4b ‘ensure the management of Council’s budget allocations and funding alternatives are compliant with Council policy and relevant legislation to ensure the long term financial sustainability of the organisation.’

IMPLEMENTATION PLAN/IMPLICATIONS

7 The distribution of the report and the information contained therein is consistent with:
   i) Council’s resolution to receive monthly financial position and performance result on a monthly basis,
   ii) Council’s Investment Policy and Strategy, and
   iii) Clause 212 of the Regulation and s. 625 of the Act.

RISK ASSESSMENT AND MITIGATION

8 No additional risk mitigation has been identified this month.

RELATED PREVIOUS DECISIONS

9 Council resolved to receive a report containing Council’s financial performance on a monthly basis.

10 At the Ordinary Council Meeting held on 26 April 2016 Council resolved to receive a report containing Council's financial performance on a monthly basis.

11 The Investment Policy Compliance Report included in the Executive Monthly Performance Report includes a specific confirmation in regard to compliance with part E of the Investment Policy.

CONSULTATION

12 A monthly workshop is conducted with the Councilors to provide detailed information and a forum to ask questions.

BACKGROUND

13 The presentation of a monthly Executive Performance Report to Council and a workshop addresses the Council resolution for monthly reporting and exceeds the requirements of the Act.

OPTIONS

Option 1

14 The recommendation as at Paragraph 1. This is the recommended option.
Option 2

15 Council resolves to vary the recommendations in the adoption of the report. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Executive Monthly Performance Report - July 2018
Distributed under separate cover
ITEM-72 CCL 28/08/18 - ADOPTION OF REVISED INVESTMENT AND BORROWING POLICY

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM CHIEF FINANCIAL OFFICER

PURPOSE

To adopt the Investment and Borrowing Policy.

RECOMMENDATION

1 Council adopts the 2018 Investment and Borrowing Policy at Attachment A.

KEY ISSUES

2 Investment Policy Guidelines issued by the Department of Premier and Cabinet, May 2010, recommend that Council's Investment Policy be reviewed, and any amendments approved, by Council resolution annually. The current Investment and Borrowing Policy (Policy) was adopted on 22 August 2017.

3 The Investment Order (Order) requires all Councils adopt an Investment Policy that is consistent with the Order and any guidelines issued by the Chief Executive (Local Government), Department of Premier and Cabinet.

4 The Office of Local Government (OLG) released a model template, the Investment Policy Guideline (Model Policy Template) in May 2010. The Policy (Attachment A) aligns with the Model Policy Template.

5 Amendments to the Policy are confined to the Investment subsection and focus on amending the risk management framework. These changes will enable Council to maximise its returns whilst retaining due consideration of all Legislative requirements.

6 All key amendments have been made in consultation with, and supported by, Councils appointed Independent Investment Advisor.

7 Key amendments include the following:
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<th>Reason for change</th>
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<tbody>
<tr>
<td>7. Risk management framework</td>
<td>Nil limit specific to TCorp IM Growth Funds</td>
<td>Specific limit to TCorp IM Growth Funds of 20%</td>
<td>The proposed amendment aims to clearly define risk limits applicable to all investment classes approved by The Order. The existing Policy lacks clear identification of TCorp Managed Funds within the Credit Risk framework. The existing Credit Risk limits permit investment into TCorp funds within the &quot;Non-rated&quot; risk category of up to 10%, however this isn't clearly defined. The proposed change includes a separate table disclosing a maximum portfolio allocation to TCorp Individually Managed Growth Funds of 20%.</td>
</tr>
<tr>
<td>7.1.7 Credit risk framework</td>
<td></td>
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</tr>
<tr>
<td>7. Risk management framework</td>
<td>Minimum rating of Investment at purchase</td>
<td>Minimum rating of investment at purchase</td>
<td>The purpose of having a minimum rating of Investment at purchase is a measure to further mitigate against risk. The existing Policy was updated 12 months ago to limit new investments into BBB rated institutions to a maximum of 3 years. This inclusion has proven too restrictive and resulted in Council's inability to participate in purchasing new investments that present attractive risk return characteristics that align with Council's underlying objectives of managing its investments in a prudent manner. The proposed amendment will enable Council to prudently assess and determine appetite to invest in Investment Grade opportunities not considered high risk. Examples of these types of investment include (but are not limited to) Senior Debt obligations issued by Bank of Queensland, Bendigo and Adelaide Bank, and Newcastle Permanent Building Society for durations of between 3 and 5 years. These are financially sound and well capitalised Institutions.</td>
</tr>
<tr>
<td>7.2 Maturity risk framework</td>
<td>&gt;3 years A</td>
<td>&gt;3 years BBB</td>
<td></td>
</tr>
<tr>
<td>Policy Clause</td>
<td>Existing</td>
<td>Proposed</td>
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</table>
|               | >5 years AA- (or major bank) | >5 years AA- (or major bank) and TCorp Growth Funds | TCorpIM Growth Funds were not disclosed in the existing maturity risk framework.  
  
  TCorp recommends that the minimum duration for investment into one of their IM Growth Funds be 5 years hence their inclusion into this category. This recommendation is based on the exposure of these investments to growth asset classes which can display increased short-term volatility as a tradeoff for expected higher average rate of return over the long run.  
  
  TCorpIM Growth Funds do not have a fixed maturity date therefore this minimum 5-year duration for investment will be monitored internally as being from the date of initial principal investment. |
FINANCIAL IMPACT

8 There are no direct financial costs associated with this recommendation.

9 Investment decisions will continue to be made in accordance with legislative requirements and stated Policy objectives, which remain unchanged.

10 The overall rate of return generated by the investment portfolio will reflect Council’s risk tolerance whilst mirroring the performance of the global economy and associated market conditions. Benchmarking is defined within the Policy to monitor the performance of the portfolio.

11 It is anticipated that the proposed amendments to the Policy will have a direct positive impact upon the long run average rate of return Council generates on its portfolio of investments.

12 On a year to year basis any funds Council invests into TCorpIM Growth Funds will be subject to a higher level of short-term volatility of returns than historically has been the case for Council’s Investment portfolio.

13 TCorp’s stated expectation is that its Long-Term Growth IM Fund (which would be Council’s preferred Growth Fund) will provide an average rate of return of CPI + 3.50% over 10 years with greater than 50% probability. Accordingly, it is the expectation that the additional volatility over the short-term should be compensated with improved returns over the longer term.

14 The proposed Policy imposes a 20% limit for TCorpIM Growth Funds to limit the impact of volatility and ensure a prudent balance of risk and return is maintained.

15 The 2018/19 budget for Interest Income from Investments was compiled based on a business as usual scenario in compliance with existing Policy restrictions.

COMMUNITY STRATEGIC PLAN ALIGNMENT

16 This Policy aligns with the strategic direction of Open and Collaborative Leadership in Council’s Community Strategic Plan. In particular it achieves objective 7.1b Ensure long-term financial sustainability through short, medium and long-term financial planning.

IMPLEMENTATION PLAN/IMPLICATIONS

17 A copy of the finalised Policy will be made available to the public on Council’s website.

18 Review of the adopted Policy will be due within twelve months from the date of this report.

19 Information on Council’s investments will continue to be reported to Council on a monthly basis.
RISK ASSESSMENT AND MITIGATION


21 The Policy ensures officers delegated authority to manage Council's investments exercise care, diligence and skill that a prudent person would exercise in investing.

22 A risk management framework within the Policy recognises risks associated with Council's investments providing tolerance and permitted exposure levels to these risks. In comparison to the existing Policy the changes proposed provide greater clarity and strengthen this risk management framework.

RELATED PREVIOUS DECISIONS

23 At the Ordinary Council Meeting held on 22 August 2017, Council resolved to adopt the existing Policy.

CONSULTATION

24 Additionally, consultation has occurred with Council's:

   i) Independent Investment Advisor;
   
   ii) Chief Executive Officer and Interim Director Governance;
   
   iii) Interim Chief Financial Officer (Responsible Accounting Officer);
   
   iv) Acting Manager Corporate Finance and Treasury Accountant; and
   
   v) Interim Manager Legal

BACKGROUND

25 Section 625 of the Local Government Act 1993 (NSW) (Act) requires Council to invest money that is not, for the time being, required by Council for any other purpose, only in the form of an investment notified by order of the Minister published in the Gazette.

26 The OLG released a model template, the Investment Policy Guideline (Model Policy Template) in May 2010. Council's Investment and Borrowing Policy includes all provisions contained within the Model Policy Template.

OPTIONS

Option 1

27 The recommendation as at Paragraph 1. This is the recommended option.
Option 2

28 Council does not resolve to adopt the 2018 Investment and Borrowing Policy. Council has a legislative requirement to review and adopt an Investment Policy each year. This is not the recommended option.

REFERENCES

Local Government Act 1993 (NSW) - Section 625

Local Government (General) Regulation 2005

Revised Ministerial Investment Order (12 January 2011)

Investment Policy Model Template, Office of Local Government (May 2010)

ATTACHMENTS

Attachment A: 2018 Investment and Borrowing Policy
Distributed under separate cover
ITEM-73  CCL 28/08/18 - APPOINTMENT OF DEPUTY LORD MAYOR

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER LEGAL

PURPOSE

To elect a Deputy Lord Mayor.

RECOMMENDATION

1  (i) That Council resolves the term of the Deputy Lord Mayor.

   (ii) That Council elects a Deputy Lord Mayor by open voting in accordance with the process set out in the *Local Government (General) Regulation 2005* (NSW).

   (iii) That [insert name of Councillor] is elected Deputy Lord Mayor for the period 26 September 2018 until 23 September 2019.

KEY ISSUES

2  Section 231 of the *Local Government Act 1993* (NSW) (Act) provides that Councillors may elect a Councillor to be the Deputy Lord Mayor.

3  The Deputy Lord Mayor is responsible for exercising functions of the Lord Mayor at the Lord Mayor's request or if the Lord Mayor is prevented from exercising that function because of illness, absence or otherwise, or if there is a casual vacancy in the office of the Lord Mayor.

4  The Deputy Lord Mayor must be nominated and elected in accordance with the process set out in Schedule 7 of the *Local Government (General) Regulation 2005* (NSW) (Regulation):

   1  Returning Officer

   The General Manager (or a person appointed by the General Manager) is the returning officer.

   2  Nomination

   (1) A Councillor may be nominated without notice for election as Mayor or Deputy Mayor.

   (2) The nomination is to be made in writing by 2 or more Councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.

   (3) The nomination is to be delivered or sent to the returning officer.
3 **Election**

(1) If only one Councillor is nominated, that Councillor is elected.
(2) If more than one Councillor is nominated, the Council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
(3) The election is to be held at the Council meeting at which the Council resolves on the method of voting.
(4) In this clause:
   - **ballot** has its normal meaning of secret ballot.
   - **open voting** means voting by a show of hands or similar means.

**FINANCIAL IMPACT**

5 Expenses incurred by the Lord Mayor, Deputy Lord Mayor and Councillors are governed by the Councillor Expenses and Facilities Policy (Expenses Policy) and budgeted for in the 2018/19 Our Budget.

**COMMUNITY STRATEGIC PLAN ALIGNMENT**

6 This aligns with the strategic direction of Open and Collaborative Leadership in Council's Community Strategic Plan. In particular it achieves Objective 2: Considered decision-making based on collaborative, transparent and accountable leadership, as set out in the Open and Transparent Governance Strategy.

**IMPLEMENTATION PLAN/IMPLICATIONS**

7 Future elections of the position of Deputy Lord Mayor will depend upon the term adopted by Council.

**RISK ASSESSMENT AND MITIGATION**

8 The Act provides for the roles, responsibilities and obligations of the Lord Mayor, Deputy Lord Mayor and Councillors. Councillors are trained in these roles, responsibilities and obligations during the induction program and ongoing professional development. As such, Councillors are aware of their requirements to fulfill the role of Deputy Lord Mayor.

**RELATED PREVIOUS DECISIONS**

9 On 26 September 2017, Councillor Clausen was elected as Deputy Lord Mayor for the period 26 September 2017 to 25 September 2018.

**CONSULTATION**

10 Not applicable.
BACKGROUND

11 Not applicable.

OPTIONS

Option 1

12 The recommendation as at Paragraph 1 (i) – (iii). This is the recommended option.

Option 2

13 That Council does not hold an election for the position of Deputy Lord Mayor. This is not the recommended option as there may be occasions where the Deputy Lord Mayor is required to undertake the functions of the Lord Mayor.

REFERENCES

ATTACHMENTS

Nil.
ITEM-74 CCL 28/08/18 - TABLING OF PECUNIARY INTEREST RETURNS

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER LEGAL

PURPOSE

For the Chief Executive Officer to table the pecuniary interest returns received from designated persons between 1 May 2018 to 31 July 2018.

RECOMMENDATION

1 Council to note the pecuniary interest returns as tabled by the Chief Executive Officer received from designated persons between 1 May 2018 and 31 July 2018.

KEY ISSUES

2 Section 449(1) of the Local Government Act 1993 (NSW) (Act) requires Councillors and designated persons to lodge a pecuniary interest return in the form prescribed by the Local Government (General) Regulation 2005 (NSW) (Regulation) within three months after becoming a Councillor or a designated person.

3 Section 441 of the Act provides that designated persons are:

   (i) The General Manager;

   (ii) Other senior staff of the Council;

   (iii) A person (other than a member of the senior staff of the Council) who is a member of a committee of the Council identified by the Council as a committee whose members are designated persons because the functions of the committee involve the exercise of the Council's functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the committee and the member's private interest; and

   (iv) A person (other than a member of the senior staff of the Council) who is a member of staff of the Council or a delegate of the Council and who holds a position identified by the Council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest.
4 Section 450A of the Act requires the Chief Executive Officer (CEO) to keep a register of pecuniary interest returns (Register of Returns) lodged and to table it at a meeting of Council.

5 In accordance with section 739 of the Act, Council has amended the Register of Returns to omit information that discloses a designated person’s place of living where:

(i) The designated person requested such information be deleted on the grounds that it would place their personal safety or their family’s safety at risk; and

(ii) The CEO was satisfied that disclosing the information would place the designated person’s safety or their family’s safety at risk.

FINANCIAL IMPACT

6 Not applicable.

COMMUNITY STRATEGIC PLAN ALIGNMENT

7 This aligns with the strategic direction of Open and Collaborative Leadership in Council's Community Strategic Plan. In particular it achieves Objective 3: Active citizen engagement on local planning and decision-making processes and a shared responsibility for achieving goals as set out in the Open and Transparent Governance Strategy, particularly in relation to open and transparent disclosures.

IMPLEMENTATION PLAN/IMPLICATIONS

8 On the day following the meeting, the Register of Returns may be accessed by members of the public (at Council’s Administrative Centre) during business hours without an appointment.

9 At all other times, the Register of Returns is available for inspection in accordance with the Government Information (Public Access) Act 2009 (NSW). Council requires a person to make an appointment to view the Register of Returns during business hours.

RISK ASSESSMENT AND MITIGATION

10 Completing and tabling pecuniary interest returns is required by legislation and it is a crucial component of Council's open and collaborative leadership strategic direction.

RELATED PREVIOUS DECISIONS

11 Pecuniary interest returns were last tabled at the Ordinary Council Meeting held on 22 May 2018 for the period 1 February 2018 to 30 April 2018.

CONSULTATION

12 Not applicable.
BACKGROUND

13 Not applicable.

OPTIONS

Option 1

14 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

15 Council does not adopt the recommendation as at Paragraph 1. This is not the recommended option because failure to table the Register of Returns at a Council meeting would constitute a breach of section 450A of the Act.

REFERENCES

ATTACHMENTS

Nil.
ITEM-75 CCL 28/08/18 - ADOPTION OF COUNCILLOR EXPENSES AND FACILITIES POLICY

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER LEGAL

PURPOSE

To adopt the Councillor Expenses and Facilities Policy.

RECOMMENDATION

1 Council adopts the Councillor Expenses and Facilities Policy at Attachment A.

KEY ISSUES

2 Section 252 of the Local Government Act 1993 (NSW) (Act) requires the Councillor Expenses and Facilities Policy (Policy) (Attachment A) to be adopted by the elected Council within the first 12 months of each Council term.

3 The Policy was publicly exhibited from 2 July 2018 to 29 July 2018 in accordance with the Act. No submissions were received during the exhibition period.

FINANCIAL IMPACT

4 Council's Operational Plan for 2018/19 provides for the payment of expenses and provision of facilities to the Lord Mayor and Councillors. This budget is sufficient to cover anticipated expenses under the Policy.

COMMUNITY STRATEGIC PLAN ALIGNMENT

5 This Policy aligns with the strategic direction of Open and Collaborative Leadership in Council's Community Strategic Plan. In particular, it achieves Objective 2: Considered decision-making based on collaborative, transparent and accountable leadership, as set out in the Open and Transparent Governance Strategy which details the actions Council will take to achieve this strategic direction.

IMPLEMENTATION PLAN/IMPLICATIONS

6 Councillors will be provided with a copy of the finalised Policy document, and the Policy will be made publically accessible.

RISK ASSESSMENT AND MITIGATION

7 The Policy is based on the Model Better Practice Template Councillor Expenses and Facilities Policy (Model Policy Template) released by the Office of Local Government (OLG) on 27 June 2017.
8 If the Policy is adopted, Council will comply with the Act and the Local Government (General) Regulation 2005.

RELATED PREVIOUS DECISIONS

9 At the Ordinary Council Meeting held on 26 June 2018, Council endorsed placing the draft Policy on public exhibition.

10 At the Ordinary Council Meeting held on 24 November 2015, Council adopted the 'Payment of Expenses and Provision of Facilities to Councillors Policy'.

CONSULTATION

11 The Policy was publicly exhibited from 1 July 2018 to 29 July 2018 with no submissions received during the exhibition period.

BACKGROUND

12 Nil.

OPTIONS

Option 1

13 The recommendation as at Paragraphs 1. This is the recommended option.

Option 2

14 Council does not resolve to adopt the draft Policy. This is not the recommended option as Council is required to adopt a Councillor Expenses and Facilities Policy within the first 12 months of each Council term.

REFERENCES

17-17 Office of Local Government Circular - Councillor Expenses and Facilities Policy – Better Practice Template

ATTACHMENTS

Attachment A: Councillor Expenses and Facilities Policy
Councillor Expenses and Facilities Policy

Newcastle City Council August 2018
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### Part A  Maximum Limits of expenditure

#### Table of Expenses

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<tr>
<th>Item</th>
<th>Expense type</th>
<th>What Council will pay for (where expenses incurred relate to the Lord Mayor and Councillors' civic function/role)</th>
<th>Maximum Limit</th>
<th>Frequency</th>
</tr>
</thead>
</table>
| 1.   | Official Business     | 1. Tickets to attend events and functions connected to the civic role of the Lord Mayor or Councillor or events providing the opportunity for Councillors to keep up to date with contemporary issues facing Council, the community, and local government in NSW.  
2. Travel and accommodation expenses incurred in connection with attending Official Business, including:  
  - Flights  
  - Public transport fares  
  - Use of a private vehicle or hire car  
  - Taxi fare or equivalent (such as Uber)  
  - Parking  
  - Tolls  
  - Overnight accommodation  
  - The reasonable cost of meals not provided as part of the registration fee. | $2,000 per Councillor  
$2,000 for the Lord Mayor (in addition to Councillor Limit)  
Note: Maximum limits do not apply to overseas travel. Cost of overseas travel will be paid in accordance with a resolution of Council. | Per Year |
<table>
<thead>
<tr>
<th>Item</th>
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<th>What Council will pay for (where expenses incurred relate to the Lord Mayor and Councillors’ civic function/role)</th>
<th>Maximum Limit</th>
<th>Frequency</th>
</tr>
</thead>
</table>
| 2.   | Professional Development                             | 1. Cost of attendance at training programs and courses that will help the Lord Mayor and Councillors to acquire and maintain the knowledge and skills necessary to perform their roles.  
2. Professional memberships  
3. Travel and accommodation expenses incurred in attending Professional Development, including:  
   - Flights  
   - Public transport fares  
   - Use of a private vehicle or hire car  
   - Taxi fare or equivalent (such as Uber)  
   - Parking  
   - Tolls  
   - Overnight accommodation  
   The reasonable cost of meals not provided as part of the registration fee. | $5,000 per Councillor | Per Year  |
<p>| 3.   | Australian Institute of Company Directors course (or equivalent type learning opportunity) | Cost of enrolment in the Australian Institute of Company Directors Course (AICD) (or equivalent type learning opportunity).                                                                                                                                                                                                                           | $4,000 per Councillor in addition to the annual Professional Development allowance in the year the course is undertaken | Per Term |</p>
<table>
<thead>
<tr>
<th>Item</th>
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<th>Maximum Limit</th>
<th>Frequency</th>
</tr>
</thead>
</table>
| 4.   | Accompanying Person | Ticket for an Accompanying Person where it is appropriate for an Accompanying Person to attend Official Business, such as:  
- Australia Day award ceremonies  
- citizenship ceremonies  
- civic receptions  
- community functions held within or contributing to the local government area  
- charitable functions formally supported by Council. | $500 per Councillor  
$500 for the Lord Mayor (in addition to Councillor limit) | Per Year |
| 5.   | Local Government NSW Conference/ National General Assembly | 1. Registration fees  
2. Tickets to the official dinner for Councillor and Accompanying Person  
3. Travel and accommodation expenses incurred in attending:  
   - Flights  
   - Public transport fares  
   - Use of a private vehicle or hire car  
   - Taxi fare or equivalent (such as Uber)  
   - Parking  
   - Tolls  
   - Overnight accommodation  
   The reasonable cost of meals not provided as part of the registration fee. | $20,000 maximum limit for Council’s representation at both events  
(shared among the elected representatives) | Per Year |
<table>
<thead>
<tr>
<th>Item</th>
<th>Expense type</th>
<th>What Council will pay for (where expenses incurred relate to the Lord Mayor and Councillors’ civic function/role)</th>
<th>Maximum Limit</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.</td>
<td>Information and communications technology (ICT) devices, equipment and expenses</td>
<td>Issue of: • Mobile phones • Mobile computing device (such as a tablet or iPad) • Printer (on request). Payment of: • Mobile phone call costs • Data package • IT support.</td>
<td>$4,000 per Councillor</td>
<td>Per Term</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$3,000 per Councillor</td>
<td>Per Year</td>
</tr>
<tr>
<td>7.</td>
<td>Stationery and office supplies</td>
<td>On request, issue of: • Stationery and office supplies • Postage costs • Newspapers / digital subscriptions • Business cards • Name badge • Christmas cards.</td>
<td>$500 per Councillor</td>
<td>Per year</td>
</tr>
<tr>
<td>8.</td>
<td>Carer expenses</td>
<td>Reimbursement of carer’s expenses to attend Official Business</td>
<td>$6000 per Councillor</td>
<td>Per Year</td>
</tr>
</tbody>
</table>

Notes:

A. Council may, by resolution, increase a Maximum Limit for a particular event in exceptional circumstances. Otherwise, expenses not explicitly addressed in this Policy will not be paid or reimbursed.

B. All monetary amounts are exclusive of GST.

C. A report summarising Councillor expenses will be presented to Council quarterly.

Annual Fees

Expenses and provisions of facilities to the Lord Mayor and Councillors are in addition to the payment of an annual fee which is paid in accordance with sections 248-251 of the Act. The annual fee is set based on determinations made by the Local Governance Remuneration Tribunal.

In accordance with the Australian Taxation Office Interpretative Decision 2007/205, Councillors may request to forego all or part of their annual fee in exchange for the Council making contributions to a complying superannuation fund on their behalf.
Part B  Preliminary

1 Purpose

1.1 The purpose of this Policy is to ensure:

1.1.1 the Lord Mayor and Councillors are provided with appropriate and reasonable expenses and facilities to enable them to carry out their civic functions;

1.1.2 the Lord Mayor and Councillors are not financially disadvantaged in performing their roles;

1.1.3 inclusiveness and diversity of representation on the elected Council;

1.1.4 expenses and facilities provided to the Lord Mayor and Councillors are transparent and accountable;

1.1.5 the provision of expenses and facilities to the Lord Mayor and Councillors is in line with community expectations; and

1.1.6 Council complies with the Act and Regulation.

2 Principles

2.1 Council commits itself to the following principles:

2.1.1 Proper conduct: The Lord Mayor and Councillors must act lawfully and honestly, and exercise care and diligence in carrying out their functions in accordance with section 439 of the Act and Council's Code of Conduct.

2.1.2 Accountability and transparency: Clearly stating and reporting on the expenses and facilities provided to the Lord Mayor and Councillors.

2.1.3 Reasonable expenses: Providing for the Lord Mayor and Councillors to be reimbursed for expenses reasonably incurred as part of their role.

2.1.4 Sustainability: Having regard to the environmental impact of travel by the Lord Mayor and Councillors.

2.1.5 Appropriate use of Council resources: Providing clear direction on the appropriate use of Council resources in accordance with legal requirements and community expectations.

3 Scope

3.1 This Policy applies to the provision of facilities and payment of expenses to support Councillors in fulfilling their civic duties.

4 Private or political benefit

4.1 The Lord Mayor and Councillors must not obtain private or political benefit from any expense or facility provided under this Policy. Such conduct constitutes misuse of Council resources and may be a breach of Council's Code of Conduct.

4.2 Council acknowledges that private use of Council equipment and facilities by the Lord Mayor and Councillors may occur from time to time. Incidental private use does not breach this Policy or Council's Code of Conduct.

4.3 The Lord Mayor and Councillors should avoid obtaining any greater benefit from Council than an incidental benefit. Where there are unavoidable circumstances and more substantial private use of Council equipment facilities does occur, the Lord Mayor and Councillors must reimburse Council in accordance with section 252(2) of the Act and clause 27 of this Policy.
4.4 Campaigns for re-election are considered to be a political benefit. The following are examples of what is considered to be a political benefit during a re-election campaign:
  4.4.1 production of election material;
  4.4.2 postage costs of election material;
  4.4.3 use of Council resources and equipment for campaigning;
  4.4.4 use of official Council letterhead, publications, websites or services; and
  4.4.5 fundraising activities of political parties or individuals, including political fundraising events.

Part C Expenses paid to the Lord Mayor and Councillors

5 Official Business

5.1 Council will pay up to the Maximum Limit expenses incurred by the Lord Mayor and Councillors in attending Official Business in accordance with this Policy.

5.2 Council will also pay up to the Maximum Limit for the Lord Mayor and Councillors to attend conferences and seminars to keep up to date with contemporary issues facing Council, the community and local government in NSW.

5.3 Expenses of the Deputy Lord Mayor attending Official Business on behalf of Lord Mayor will be deducted from the Lord Mayor's limit.

5.4 Expenses for an Accompanying Person will be paid, up to the Maximum Limit, where it is considered appropriate an Accompanying Person attend Official Business.

6 Professional Development

6.1 The Act requires Councillors to make reasonable efforts to acquire and maintain the skills necessary to perform the role of a Councillor. Council supports the training, education and ongoing Professional Development of the Lord Mayor and Councillors to ensure they develop and maintain the knowledge and skills required to undertake their roles and responsibilities effectively.

6.2 In the first year of Council's term, Council will provide a comprehensive induction program for the Lord Mayor and Councillors which takes into account any guidelines issued by the OLG. The cost of the induction program will be in addition to the individual's Professional Development funding.

6.3 Council will pay, up to the Maximum Limit, Professional Development expenses incurred by the Lord Mayor and Councillors provided approval is granted in accordance with clause 22 having regard to:

6.3.1 the suitability and relevance of the Professional Development to current Council priorities and business, and the exercise of the Lord Mayor's or Councillor's civic duties;

6.3.2 the benefit of the Professional Development to Council and the Lord Mayor or Councillor; and

6.3.3 whether the Professional Development should be offered to all Councillors

6.4 Annual membership of professional bodies will be reimbursed where:
6.4.1 the membership is relevant to the exercise of the Councillor’s or Lord Mayor’s civic duties;
6.4.2 the Councillor or Lord Mayor actively participates in the body; and
6.4.3 the cost of membership is likely to be fully offset by savings from attending events as a member.

7 Australian Institute of Company Directors course
7.1 Council will pay expenses, up to the Maximum Limit, for the Lord Mayor and Councillors to complete the Australian Institute of Company Directors (AICD) course (or equivalent type learning opportunity).
7.2 The Lord Mayor and Councillors may only claim expenses for the AICD course within the first two years of their first Term as a Councillor.
7.3 The Lord Mayor and Councillors must seek upfront approval in accordance with clause 21 prior to enrolling in the AICD course. The Lord Mayor and Councillors are required to provide Council with evidence of successful completion of the course.
7.4 Council will seek reimbursement from the Lord Mayor or Councillor in accordance with clause 26, if the Lord Mayor or Councillor does not successfully complete the course, at the determination of the CEO.

8 Travel and accommodation within Australia
8.1 The Lord Mayor and Councillors will be reimbursed up to the Maximum Limit for travel associated with Official Business or Professional Development within Australia where attendance is relevant to their official functions/role as the Lord Mayor or Councillor.
8.2 All travel by the Lord Mayor and Councillors should be undertaken using the most direct route and the most practicable and economical mode of transport.
8.3 Allowances for the use of a private vehicle will be reimbursed by kilometre at the rate contained in the Local Government (State) Award. The Lord Mayor and Councillors seeking to be reimbursed for use of a private vehicle must keep a log book recording the date, distance and purpose of travel being claimed and provide a copy of it as part of their claim.
8.4 Actual expenses incurred for accommodation and meals (breakfast, lunch and dinner) not include in a registration fee will be paid for travel outside of the Newcastle area in accordance with the rates set out in the NSW Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 up to the Maximum Limit.
8.5 Accommodation standard is to be determined on best value and government rates should be utilised where possible. Generally the accommodation standard is to be equivalent of 4 stars.

9 Travel and accommodation overseas
9.1 Official Business overseas may be approved by a resolution of Council where there are tangible benefits for Council and the local community. The elected Council should consider the value and need for the Lord Mayor and Councillors to undertake Official Business overseas when determining such approvals.
9.2 Each occasion of Official Business overseas must be approved in advance by a Council resolution with the Council resolution detailing:
9.2.1 objectives to be achieved through the Official Business overseas, including an explanation of how the Official Business aligns with current
Council priorities and business, the community benefits that will be accrued as a result, and its relevance to the exercise of the Lord Mayor or Councillor’s civic duties;

9.2.2 who is to take part in the Official Business overseas;
9.2.3 the duration and itinerary of the Official Business overseas;
9.2.4 a detailed budget including a statement of any amounts expected to be reimbursed by the Lord Mayor or Councillors themselves.

9.3 For Official Business overseas, the class of air travel is to be premium economy if available. Otherwise, the class of travel is to be economy.

9.4 Once approved by the elected Council, bookings for Official Business overseas will be undertaken by the CEO and Manager Legal.

9.5 For travel and accommodation expenses that are reimbursed as Official Business, the Lord Mayor and Councillors must not accrue points from any loyalty programs or programs that aim to reward users of their services/products. This includes frequent flyer, flybuys, velocity points, and everyday rewards. Accrual of points is considered a private benefit.

9.6 Subject to the approving resolution of Council, it is expected that within a reasonable period of returning from Official Business overseas, the Lord Mayor and/or Councillor submit a report to, or briefing to, the elected Council outlining the relevance of the trip to Council and the local community.

10 Attendance at the Local Government NSW Annual Conference or the National General Assembly

10.1 Council will pay the following expenses up to the Maximum Limit, for the Lord Mayor and Councillors nominated by the elected Council to attend the Local Government NSW Annual Conference or the National General Assembly:

10.1.1 travel and accommodation costs in accordance with this Policy;
10.1.2 registration for the delegate; and
10.1.3 tickets to the official dinner for the delegate and the delegate’s Accompanying Person.

11 Meals and refreshments for Council meetings

11.1 Appropriate refreshments will be available for the Lord Mayor and Councillors during Council meetings and workshops.

12 Special requirements and carer expenses

12.1 Council encourages wide participation and interest in civic office and seeks to ensure that Council premises and facilities are accessible, including making provisions for sight or hearing impaired Councillors and those with other disabilities.

12.2 The CEO may authorise the provision of reasonable additional facilities and expenses in order to enable the Lord Mayor or a Councillor with a disability perform their civic duties.

12.3 The Lord Mayor and Councillors who are the principal carer of a child or elderly, disabled and/or sick immediate family member will be entitled to reimbursement of carer’s expenses up to the Maximum Limit where the Lord Mayor or Councillor
is required to attend Official Business, plus reasonable travel from and to the principal place of residence.

12.4 Child carer expenses may be claimed for children up to and including the age of 16 years where the carer is not a relative.

12.5 Council will reimburse reasonable child care expenses up to the Maximum Limit less any Child Care rebates or benefits paid by the Federal Government.

12.6 In the event of caring for an adult person, the Lord Mayor and Councillors will need to provide suitable evidence with their claim that reimbursement is appropriate. This may take the form of advice from a medical practitioner.

13 Information and communications technology (ICT) device and equipment expenses

13.1 Council will provide the Lord Mayor and Councillors (up to the Maximum Limit) with ICT devices and equipment as determined from time to time such as a mobile phone, tablet (iPad) and printer (where required).

13.2 Council will pay, up to the Maximum Limit, the following expenses associated with the maintenance and operation of ICT devices and equipment provided in accordance with this Policy:

13.2.1 Mobile phone call costs;
13.2.2 Data package;
13.2.3 IT support; and
13.2.4 Repairs or replacement.

14 Expenses not paid by Council

14.1 Council will not pay any traffic or parking fines, or administrative charges for road toll accounts.

14.2 Council will not pay for or reimburse the Lord Mayor or a Councillor for any component of a ticket price that is additional to the actual cost of the service, such as a donation to a charity, political party or candidate’s electoral fund.

Part D Provision of facilities to the Lord Mayor and Councillors

15 Facilities and provision - Council Chamber and City Administration Centre

15.1 Council will provide the following to the Lord Mayor and Councillors to assist them in effectively discharging their civic duty:

15.1.1 access to meeting room facilities;
15.1.2 access to technical resources including Council information, policies and relevant legislation; and
15.1.3 three car parking spaces at Council’s City Administration Centre to be shared among Councillors while attending Council offices on Official Business.
16 Office supplies and facilities

16.1 Council will provide or make available, up to the Maximum Limit, office supplies and facilities.

17 Additional facilities, support and expenses for the Lord Mayor

17.1 Council recognises the role of Lord Mayor and will provide, the following additional facilities:

17.1.1 a maintained vehicle to a similar standard of other Council vehicles and a fuel card for use to attend Official Business and Professional Development and attendance at the Lord Mayor’s Office;
17.1.2 a car parking space at Council’s City Administration Centre;
17.1.3 furnished office, with computer, printing and copying facilities, internet access;
17.1.4 reasonable office refreshments such as tea, coffee and biscuits;
17.1.5 daily newspapers / digital subscriptions;
17.1.6 Lord Mayoral Chains of Office and robes for official, civic and ceremonial use;
17.1.7 Lord Mayoral letterhead; and
17.1.8 corporate credit card for the payment of expenses incurred in accordance with this Policy.

17.2 Staff for the Lord Mayor’s Office as determined by the CEO in consultation with the Lord Mayor (consistent with the Instrument of Delegation to the Lord Mayor).

17.3 When deputising for the Lord Mayor, the Deputy Lord Mayor will be provided with reasonable access to and use of the facilities provided to the Lord Mayor under this Policy. Expenses incurred during this time related to the use of facilities will be deducted from the Lord Mayor’s budget.

18 Return of equipment and facilities

18.1 If the Lord Mayor or a Councillor ceases to hold office, the Lord Mayor or Councillor will return all Council equipment and facilities provided to them under this Policy to Council unless purchased by the Councillor for fair market value as determined by the CEO.

18.2 The prices for all equipment purchased by the Lord Mayor and Councillors under clause 18.1 will be recorded in Council’s Annual Report.

18.3 Where the Lord Mayor or a Councillor does not return Council equipment and facilities to Council upon ceasing to hold office as a Lord Mayor or a Councillor, Council will invoice them for the costs of those items, based on fair market value as determined by the CEO.

19 Council programs

19.1 Council will provide the Lord Mayor and Councillors with access to:

19.1.1 Council’s Employee Assistance Program in accordance with Council’s Employee Assistance Program guidelines.
19.1.2 Council’s Corporate Fitness Program in accordance with Council’s Corporate Fitness Information Booklet.
19.1.3 tickets to productions, exhibitions, or events presented, sponsored or hosted by Council (where these are made available to Council).

20 Gifts

20.1 In circumstances where it is appropriate for the Lord Mayor or a Councillor to give a gift (such as when representing Council on Official Business), appropriate civic gifts of token value will be provided by Council.

Part E Approval of payment and reimbursements to the Lord Mayor and Councillors

21 Assessment and approval of claims and reimbursements

21.1 Claims for payment of an expense incurred by the Lord Mayor or a Councillor will be assessed in accordance with the relevant clauses of this Policy, by at least two of the following:

21.1.1 the CEO;
21.1.2 the Director Governance;
21.1.3 the Chief Financial Officer; or
21.1.4 the Manager Legal.

21.2 Generally, approval for expenses should be obtained before the expense is incurred.

21.3 If a claim is approved, Council will make payment directly or reimburse the Lord Mayor or Councillor through accounts payable. In some cases, an advance cash payment may be offered to the Lord Mayor or Councillor to facilitate bookings.

21.4 If a claim is refused, Council will inform the Lord Mayor or Councillor in writing that the claim has been refused and the reasoning.

22 Process for payments made directly by Council

22.1 If requested by the Lord Mayor or a Councillor, Council will pay, up to the Maximum Limit, directly for expenses incurred in accordance with this Policy.

22.2 Requests for direct payment must:

22.2.1 be submitted via the Online Councillor Expenses Claim form found on the Councillors’ HUB; and

22.2.2 provide sufficient information and time to allow assessment of the claim.

22.3 All claims for direct payment will be assessed in accordance with clause 22.

23 Process for advance payments

23.1 If requested by the Lord Mayor or a Councillor, Council will provide an advance payment, up to the Maximum Limit, for expenses incurred in relation to approved Official Business and/or Professional Development.

23.2 Requests for advance payment must:

23.2.1 be submitted via the Online Councillor Expenses Claim form found on the Councillors’ HUB; and

23.2.2 provide sufficient information and time to allow assessment of the claim.
23.3 If the Lord Mayor or a Councillor receives an advance payment from Council, the Lord Mayor or Councillor must, within 10 days of the event, provide to Council:
   23.3.1 a full reconciliation of all expenses including receipts; and
   23.3.2 a reimbursement of any amount of the advance cash payment that was not spent in attending to Official Business and/or Professional Development.

23.4 All claims for advance payment will be assessed in accordance with clause 22.

24 Process for reimbursement

24.1 Reimbursement claims must be lodged within 28 days of the expense being incurred. For example, generally claims for expenses incurred in January must be lodged by the end of February. The claim should:
   24.1.1 be submitted via the Online Councillor Expenses Claim form found on the Councillions' HUB;
   24.1.2 provide sufficient information to allow assessment of the claim; and
   24.1.3 attach relevant tax invoices and receipts; or
   24.1.4 if it is not possible to attach tax invoices and receipts, provide a statutory declaration explaining the calculation of the claim and why it should be paid.

24.2 All claims for reimbursement will be assessed in accordance with clause 22. If a claim is lodged after the time period provided in clause 24.1, it may be refused.

25 Lord Mayor's corporate credit card

25.1 The Lord Mayor is provided with a corporate credit card to pay for expenses incurred in accordance with this Policy up to the Maximum Limit.

25.2 Expenses relating to the Lord Mayor's Office and staff within the Office must be incurred in accordance with other relevant Council policies (including but not limited to Council's Procurement Policy).

26 Reimbursement to Council

26.1 If Council has incurred an expense on behalf of the Lord Mayor or a Councillor that exceeds a Maximum Limit, exceeds reasonable incidental private use or is not provided for in this Policy:
   26.1.1 Council will invoice the Lord Mayor or Councillor for the expense; and
   26.1.2 the Lord Mayor or Councillor will reimburse Council for that expense within 14 days of the invoice date.

26.2 Invoices for actual costs incurred by the Lord Mayor or a Councillor for private benefits will be issued where actual costs can be ascertained (for example costs of private use of a mobile phone will be calculated based on the mobile phone account).

26.3 Invoices for private use of a Council motor vehicle will be calculated using the rate contained in the Local Government (State) Award.
Part F Insurance and legal expenses

27 Insurances

27.1 In accordance with section 382 of the Act, Council’s insurances provide insurance cover for the Lord Mayor and each Councillor while attending Official Business and/or Professional Development.

27.2 Insurance protection is only provided if a claim arises out of or in connection with the Lord Mayor’s or Councillor’s performance of his or her civic duties, or exercise of his or her functions as Lord Mayor or a Councillor. All insurances are subject to any limitations or conditions set out in the respective insurance policies.

27.3 Council will pay the insurance policy excess in respect of any claim accepted by Council’s insurers, whether defended or not.

27.4 Appropriate travel insurances will be provided for the Lord Mayor and Councillors travelling on approved interstate and overseas travel on Official Business.

28 Legal assistance

28.1 Council may, if requested, indemnify or reimburse the reasonable legal expenses of:

28.1.1 The Lord Mayor or a Councillor defending an action arising from the performance in good faith of a function under the Act provided that the outcome of the legal proceedings is favourable to the Lord Mayor or Councillor;

28.1.2 The Lord Mayor or a Councillor defending an action in defamation, provided the statements complained of were made in good faith in the course of exercising a function under the Act and the outcome of the legal proceedings is favourable to the Lord Mayor or Councillor;

28.1.3 The Lord Mayor or a Councillor for proceedings before an appropriate investigative or review body, provided the subject of the proceedings arises from the performance in good faith of a function under the Act, and the matter has proceeded past any initial assessment phase to a formal investigation or review and the investigative or review body makes a finding substantially favourable to the Lord Mayor or Councillor.

28.2 In the case of a Code of Conduct complaint made against the Lord Mayor or a Councillor, legal costs will only be made available where the matter has been referred by the CEO to a conduct reviewer, the conduct reviewer has commenced a formal investigation of the matter and makes a finding substantially favourable to the Lord Mayor or Councillor.

28.3 In the case of a pecuniary interest misbehaviour matter, legal costs will only be made available where a formal investigation has been commenced by the OLG and the OLG makes a finding substantially favourable to the Lord Mayor or Councillor.

28.4 Legal expenses incurred in relation to proceedings arising out of the performance by the Lord Mayor or a Councillor of his or her functions under the Act are distinguished from expenses incurred in relation to proceedings arising merely from something that the Lord Mayor or a Councillor has done during his or her term in office. For example, expenses arising from an investigation as to whether the Lord Mayor or a Councillor acted corruptly would not be covered by this section.
28.5 Council will not pay the Lord Mayor or a Councillor’s legal expenses if:

28.5.1 the legal proceedings were initiated by the Lord Mayor or a Councillor under any circumstances;

28.5.2 the Lord Mayor or a Councillor is seeking advice in respect of possible defamation, or in seeking a non-litigious remedy for possible defamation;

28.5.3 the legal proceedings do not involve the Lord Mayor or a Councillor performing their role as Lord Mayor or Councillor.

28.6 Reimbursement of reasonable legal expenses must be approved in advance by a Council resolution.

Part G  Miscellaneous

29 Dispute

29.1 If the Lord Mayor or Councillor disputes a determination under this Policy, the Councillor should discuss the matter with the CEO.

29.2 If the Lord Mayor or Councillor and the CEO cannot resolve the dispute, the Councillor may submit a Notice of Motion to Council seeking to have the dispute resolved.

Part H  Reporting

30 Annual report

30.1 The CEO will include information on expenses and facilities provided under this Policy in Council's Annual Report in accordance with the Act and Regulation.

31 Auditing

31.1 The operation of this Policy, including claims made under the Policy, will be included in Council’s audit program and an audit undertaken every Term.

32 Breaches

32.1 Suspected breaches of this Policy must be reported to the CEO.

32.2 Alleged breaches of this Policy will be dealt with in accordance with Council's Code of Conduct and Council’s Procedures for the Administration of the Code of Conduct.
Annexure A - Definitions

Accompanying Person means a spouse, partner, de-facto or other person who has a close personal relationship with, or provides care support to a Councillor.

Act means the Local Government Act 1993 (NSW).

CEO means the Chief Executive Office of Council and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the Local Government Act 1993 (NSW).

Council means Newcastle City Council.

Maximum Limit means the maximum monetary amount Council has approved to pay to Councillors for facilities and expenses.

Official Business means events and functions connected to the civic role of the Lord Mayor or Councillor or events providing the opportunity for Councillors to keep up to date with contemporary issues facing Council and the community, and local government in NSW.

OLG means Office of Local Government.

Professional Development means training programs and courses/programs that will help the Lord Mayor and Councillors to acquire and maintain the knowledge and skills necessary to perform their roles.

Regulation means the Local Government (General) Regulation 2005 (NSW).

Term means duration or period whereby an elected official holds their position in office. Local government terms are usually for a period of four (4) years unless otherwise determined by the Minister of Local Government.

Year means the 12 month period commencing on 1 July each year.

Unless stated otherwise, a reference to a section or clause is a reference to a section or clause of this Policy.
## Annexure B - Policy Authorisations

<table>
<thead>
<tr>
<th>Function</th>
<th>Position Number / Title</th>
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<tr>
<td>Approve payment or reimbursement of expenses in accordance with this Policy</td>
<td>Any two of:</td>
</tr>
<tr>
<td></td>
<td>• CEO</td>
</tr>
<tr>
<td></td>
<td>• Director Governance</td>
</tr>
<tr>
<td></td>
<td>• Chief Financial Officer</td>
</tr>
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<td></td>
<td>• Manager Legal</td>
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Councillor Expenses and Facilities Policy
Version Eight - Effective 28 August 2018
<table>
<thead>
<tr>
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<tr>
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<tr>
<td>Policy expert/writer</td>
<td>Legal and Governance Officer</td>
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</tr>
<tr>
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<td>Elected Council</td>
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<tr>
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</tr>
<tr>
<td>Commencement Date</td>
<td>To be completed by Legal</td>
</tr>
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<td>Date the policy is due for revision</td>
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<tr>
<td>Termination date</td>
<td>To be completed by Legal(one year post next revision date)</td>
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<td>Open and Collaborative Leadership</td>
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<tr>
<td>Relevant strategy</td>
<td>Open and Transparent Governance Strategy</td>
</tr>
<tr>
<td>Relevant legislation/codes (reference to specific sections)</td>
<td>Local Government Act 1993 (NSW) - section 232, 252, 253, 254, 382, 439, 440</td>
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<tr>
<td></td>
<td>Local Government (General) Regulation 2005 (NSW) - cl. 217, 403</td>
</tr>
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<td></td>
<td>Council's Code of Conduct</td>
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<tr>
<td>Related policies/documents</td>
<td>Office of Local Government - 17-17 Councillor Expenses and Facilities Policy - Better Practice Template (27/06/2017)</td>
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<td>Office of Local Government - Guidelines for the Payment of Expenses and the Provision of Facilities to Mayors and Councillors in NSW (October 2009) - prepared under the provisions of section 23A of the Act</td>
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<td></td>
<td>Australian Taxation Office Interpretative Decision 2007/205</td>
</tr>
<tr>
<td></td>
<td>Local Government (State) Award</td>
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</table>
| Policy authorisations | NSW Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009  
|                       | Council's Procedures for the Administration of the Code of Conduct  
|                       | Procurement Policy  
|                       | Corporate Fitness Information Booklet  
|                       | Employment Assistance Program Policy  
| Related forms         | Online Councillor Expenses claim form  
| Required on website   | Yes  
| Policy authorisations | Any two of:  
|                       | CEO  
|                       | Director Governance  
|                       | Chief Financial Officer  
|                       | Manager Legal |
ITEM-76 CCL 28/08/18 - ADOPTION OF THE REVISED PUBLIC VOICE AND PUBLIC BRIEFING POLICY

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER LEGAL

PURPOSE

To adopt the revised Public Voice and Public Briefing Policy.

RECOMMENDATION

1 Council adopts the revised Public Voice and Public Briefing Policy at Attachment A.

KEY ISSUES

2 Public Voice and Public Briefing sessions have been operating at Council since 1999. The sessions provide members of the community with the opportunity to directly address Councillors on development application (DA) matters or matters falling within the jurisdiction of Council that are of a strategic nature. The revised Public Voice and Public Briefing Policy (Policy) (Attachment A) clarifies and streamlines the existing Public Voice and Public Briefing process (Attachment B).

3 The only substantive change to the revised Policy is to provide that where members of the public have issues or concerns in respect of a DA that is to go before the elected Council at a Development Application Committee, and a Public Voice application has not been submitted during the public exhibition period, the objectors and the DA applicant will be provided with an invitation to address Councillors at a Public Voice session. This implements the actions identified in the Open and Transparent Governance Strategy.

FINANCIAL IMPACT

4 Council's Operational Plan for 2018/19 provides for arrangements for Council meetings. This budget is sufficient to cover the anticipated expenses under the Policy.

COMMUNITY STRATEGIC PLAN ALIGNMENT

5 This Policy aligns with the strategic direction of Open and Collaborative Leadership in Council's Community Strategic Plan.
6 Council's Open and Transparent Governance Strategy, Objective 3: Active citizen engagement on local planning and decision-making processes and a shared responsibility for achieving goals, is achieved within this Policy. In particular, Strategy 3.3 - Clear line of communications between members of the public and Councillors details the actions to be taken by Council. This includes the inclusion of provisions to extend invitations to Public Voice sessions in respect of DAs where no applications are received during the public exhibition period.

IMPLEMENTATION PLAN/IMPLICATIONS

7 The final Policy will be made available on Council's website along with the Public Voice/Public Briefing application form.

RISK ASSESSMENT AND MITIGATION

8 The OLG states there is no automatic right under the Act or the Regulation for the public to participate in a Council meeting, either by written submission or oral presentation. Council considers that providing some form of public participation is good practice and provides a clear line of communication between members of the public and Councillors.

RELATED PREVIOUS DECISIONS

9 The Policy has not been revised since its adoption in 1999, however, the principles remain largely unchanged.

10 At the Council meeting held on 26 June 2018 when adopting the Code of Meeting Practice, Council also resolved that a memo should be prepared for Councillors on ways to engage in accordance with the Open and Transparent Governance Strategy. This memo will be prepared on adoption of the revised Policy.

CONSULTATION

11 Relevant Council Service Units, particularly Regulatory and Assessment, have participated in the review of this Policy.

BACKGROUND

12 Nil.

OPTIONS

Option 1

13 The recommendation as at Paragraph 1. This is the recommended option.
Option 2

14 Council resolve not to adopt the Policy. This is not the recommended option due to the outdated information.

REFERENCES

ATTACHMENTS

Public Voice and
Public Briefing Policy
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  1 Purpose ............................................................................................................................. 1
  2 Scope ................................................................................................................................ 1
  3 Principles .......................................................................................................................... 1
  4 Responsibilities ................................................................................................................. 1

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  5 What are Public Voice sessions? ........................................................................................ 2
  6 Procedure for applying for Public Voice session and assessment criteria ....................... 2
  7 Alternatives to a Public Voice session ............................................................................... 4

Part C Public Briefing sessions ............................................................................................... 4
  8 What are Public Briefing sessions? .................................................................................... 4
  9 Procedure for applying for Public Briefing session and assessment criteria .................. 4

Annexure A - Definitions ....................................................................................................... 6

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Document Control .................................................................................................................. 8
Part A Preliminary

1 Purpose

1.1 The purpose of the Policy is to provide a framework to allow members of the public to address the elected Council on issues relevant to Council’s functions.

1.2 The elected Council does not make decisions at Public Voice or Public Briefing sessions. The sessions are an opportunity for discussion only.

2 Scope

2.1 The Policy applies to all applications for a Public Voice or Public Briefing session.

3 Principles

Council commits itself to the following principles:

3.1 Establishing a framework whereby members of the public may communicate opinions or concerns directly to Councillors by way of an address to the Council in open session; and

3.2 Enabling members of the public to bring before the Council significant issues of a general, strategic or policy nature relevant to Council’s functions, facilities or services.

4 Responsibilities

4.1 Legal Service Unit

4.1.1 Assess, in consultation with the relevant Service Unit Managers/Directors and CEO, applications for a Public Voice or Public Briefing session against the criteria of the Policy.

4.1.2 Communicate with Public Voice or Public Briefing applicants regarding sessions and make arrangements in accordance with standard meeting procedures.

4.2 Service Unit Managers/Directors

4.2.1 Assess and determine, in consultation with the CEO and Manager Legal, applications for a Public Voice or Public Briefing session against the criteria of the Policy.
Part B  Public Voice sessions

5 What are Public Voice sessions?

5.1 Public Voice sessions provide an opportunity for members of the public to make presentations to the elected Council on:

5.1.1 Development Applications (DAs) that are to be determined by Council’s Development Applications Committee at a future meeting;

5.1.2 planning matters, including planning proposals, that are subject to determination by the elected Council; or

5.1.3 significant issues relevant to Council’s functions, facilities or services under the Local Government Act 1993 (NSW).

6 Procedure for applying for Public Voice session and assessment criteria

<table>
<thead>
<tr>
<th>Frequency of sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month (when scheduled) or in accordance with Council’s adopted meeting cycle.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lodging a Public Voice application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications are to be submitted on the approved Public Voice/Public Briefing Application Form (available on Council’s website) with all sections of the form being completed. Incomplete forms will not be processed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Criteria for assessing Public Voice applications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Significant issues sessions</strong></td>
</tr>
<tr>
<td>Public Voice applications about significant issues will be assessed against the following criteria:</td>
</tr>
<tr>
<td>i) The application relates to an aspect of Council’s functions, facilities or services; and</td>
</tr>
<tr>
<td>ii) The application does not relate to a DA; and</td>
</tr>
<tr>
<td>iii) The applicant has previously raised the matter with the relevant area of Council or Ward Councillor (details will be required of this and are to be attached to the application form – for example, copy of the response provided); and</td>
</tr>
<tr>
<td>iv) The applicant has not presented the matter to a Public Voice session in the past two years or the application does not relate to the same subject matter of a Public Voice application that has been refused by Council in the past two years, unless the CEO determines the matter has significantly changed or the elected</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DA / planning sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Voice applications about a DA/planning matters will be assessed against the following criteria:</td>
</tr>
<tr>
<td>i) The application relates to a matter that is to be determined by Council’s Development Applications Committee, or in the case of planning instruments by the elected Council; and</td>
</tr>
<tr>
<td>ii) The matter is not vexatious, defamatory, an abuse of process, or outside the scope of Council.</td>
</tr>
</tbody>
</table>

Public Voice applications for DA/planning matters will be accepted and assessed on a first come first service basis as follows:

1. The Public Voice application is lodged during the exhibition/submission period for the relevant development matter (DA/planning proposal) and the applicant has lodged a submission to the DA; or

2. Where no Public Voice applications are lodged during the exhibition/submission period the applicant to the DA and parties who have lodged a formal submission with
Council request by resolution a Public Voice session; and
v) The application does not request a decision or commitment of Council (such an issue would need to go before a Council Meeting); and
vi) The matter is not vexatious, defamatory, an abuse of process or outside the scope of Council.

Council on the proposed DA will be invited to attend.

D. Assessment of applications

The relevant Service Unit Manager/Director, in consultation with the CEO and Manager Legal, will assess and determine applications against the criteria set out in clause 6C.

E. Notice to applicants

Significant issues sessions

Public Voice applications will be acknowledged within 2 business days of receipt.

Within 28 business days of receiving an application, Council will:
1. schedule a Public Voice session (subject to timing considerations in clause 6F) and advise the applicant of the details; or
2. write to the applicant advising that their application has been rejected (with reasons taking into account the criteria set out in clause 6C).

Successful applicants will be scheduled for the next available Public Voice session (generally the third Tuesday of the month).

DA / planning sessions

Public Voice applications will be acknowledged within 2 business days of receipt.

Where the DA is to be determined by Council’s Development Applications Committee, the Public Voice applicant will be notified of a Public Voice session.

Public Voice sessions relating to DAs are normally scheduled to occur at least one month prior to the DA being scheduled for determination by Council’s Development Applications Committee.

Where Council does not receive any applications for Public Voice in respect of a DA to be determined by Council’s Development Applications Committee during the exhibition / submission period, the DA applicant and those who lodged a submission with Council regarding the DA, will be invited to a Public Voice session. Presenters will be determined on a first come, first served basis.

F. Conduct of sessions

Sessions are 30 minutes in duration, subject to the discretion of the Chairperson.

A maximum of four sessions will be scheduled for each meeting.

Each Public Voice session is limited to:
• two speakers for an issue (10 minutes in total);
• two speakers against an issue (10 minutes in total); and
• questions from Councillors (10 minutes in total).

Speakers are to confine their presentation to the matters identified in their application. In respect of a DA session, objectors to a DA proposal will speak first.

Councillors will receive a business paper in connection with the Public Voice session in advance of the meeting. The business papers are available to members of the public on Council’s website.
The minutes of the Public Voice session are a summary record of the session. The minutes are available to members of the public on Council’s website following the meeting.

Sessions are webcast and open to the public. As such speakers should not:
- make personal reflections on any person;
- make statements that may cause offence or be defamatory or insulting.

The Chairperson may direct a speaker to cease their presentation if the speaker does not conduct themselves in accordance with this Policy.

Speakers should not attempt to provide material to Councillors immediately before, or during, a Public Voice session. Presentations/information must be provided to the Legal Service Unit by close of business the day prior to the scheduled session.

7 Alternatives to a Public Voice session

7.1 As an alternative to applying for Public Voice, members of the public are encouraged to communicate or raise issues with Council by:

7.1.1 submitting a Customer Service Request;
7.1.2 engaging with Council through public exhibitions, events and activities; or
7.1.3 writing to Councillors directly using the contact details available on the Council website.

Part C Public Briefing sessions

8 What are Public Briefing sessions?

8.1 Public Briefing sessions provide an opportunity for organisations to make short presentations relating to significant issues of a general, strategic or policy nature relevant to Council’s functions, facilities or services.

9 Procedure for applying for Public Briefing session and assessment criteria

<table>
<thead>
<tr>
<th>A. Frequency of sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month (when scheduled) or in accordance with Council’s adopted meeting cycle.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Lodging a Public Briefing application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications are to be submitted on the approved Public Voice/Public Briefing Application Form (available on Council’s website) with all sections of the form being completed. Incomplete forms will not be processed.</td>
</tr>
<tr>
<td>Public Briefings may also be scheduled at the direction of the CEO or by resolution of Council.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C. Criteria for assessing Public Briefing applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Briefing applications will be assessed against the following criteria:</td>
</tr>
<tr>
<td>i) the application relates to an aspect of Council’s functions, facilities or services;</td>
</tr>
<tr>
<td>ii) the application does not relate to DAs or planning matters;</td>
</tr>
<tr>
<td>iii) the applicant has not presented on the issue to a Public Briefing session in the past two years or the application does not relate to the same subject matter of a Public Briefing application that has been refused by Council in the past two years, unless the CEO determines the matter has significantly changed or the elected Council request a Public</td>
</tr>
</tbody>
</table>
Briefing session;
iv) the application does not request a decision or commitment of Council (such an issue would need to go before a Council Meeting); and
v) the matter is not vexatious, defamatory, an abuse of process or outside the scope of Council.

D. Assessment of applications
The relevant Service Unit Manager/Director, in consultation with the CEO and Manager Legal, will assess and determine applications against the criteria in clause 9C.

E. Notice to applicants
Public Briefing applications will be acknowledged within 2 business days of receipt.

Within 28 business days of receiving an application for a Public Briefing session, Council will:
1. schedule a Public Briefing session (subject to timing considerations in 9F) and advise the applicant of the details; or
2. write to the applicant advising that their application has been rejected (with reasons taking into account the criteria set out in clause 9C).

Successful applicants will be scheduled for an upcoming Public Briefing session (generally the third Tuesday of the month).

F. Conduct of sessions
Sessions are 30 minutes in duration, subject to the discretion of the Chairperson.

A maximum of two sessions will be scheduled for each meeting.

Each Public Briefing session is limited to:
- two speakers on an issue (20 minutes in total); and
- questions from Councillors (10 minutes in total).

Speakers are to confine their presentation to the issues identified in their application.

Councillors will receive a business paper in connection with the Public Briefing session in advance of the meeting. The business papers are available to members of the public on Council’s website.

The minutes of the Public Briefing session are a summary record of the session. The minutes are available to members of the public on Council’s website following the meeting.

Sessions are webcast and open to the public. As such speakers should not:
- make personal reflections on any person; or
- make statements that may cause offence or be defamatory or insulting.

The Chairperson may direct a speaker to cease their presentation if the speaker does not conduct themselves in accordance with this Policy.
Annexure A - Definitions

CEO means Chief Executive Officer of Newcastle City Council and includes their delegate or authorised representative.

References to the Chief Executive Officer are references to the General Manager appointed under the Local Government Act 1993 (NSW).

Chairperson means the Lord Mayor, or Councillor, chairing the Public Voice Committee or Briefing Committee meeting.

Council means Newcastle City Council.
Annexure B - Policy Authorisations

<table>
<thead>
<tr>
<th>Function</th>
<th>Position Number / Title</th>
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<td>The CEO will authorise staff to determine applications for Public Voice or Public Briefing sessions</td>
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<td>Director Governance / Manager Legal</td>
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<td><strong>Policy expert/writer</strong></td>
<td>Legal and Governance Officer</td>
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<td><strong>Associated procedure Title</strong></td>
<td>Nil</td>
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<td><strong>Procedure owner (if applicable)</strong></td>
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<td><strong>Relevant strategy</strong></td>
<td>Open and Transparent Governance Strategy</td>
</tr>
<tr>
<td><strong>Relevant legislation/codes (reference specific sections)</strong></td>
<td>NIL - this provides for public participation above the requirements of the Local Government Act 1993</td>
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</table>
| **Other related policies/documents/strategies** | Code of Meeting Practice  
Code of Conduct  
Public Voice/Public Briefing Information Sheet |
| **Related forms**     | Public Voice/Public Briefing Application Form |
| **Required on website** | Yes |
| **Authorisations**    | Functions authorised under this policy at Annexure B. |
PUBLIC VOICE

POLICY ADOPTED 20 JULY 1999
Production:

Public Voice was written by the Development and Environment Division of Newcastle City Council.

Acknowledgements:

Newcastle City Council wishes to acknowledge the contribution made over many years by Mr Rob Winston.

Enquiries:

For information about this policy, contact:

The Council Services Team
(Council Services Co-ordinator)
Newcastle City Council
Phone: 02 4974 2464
Fax: 02 4974 2403

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E-mail: mail@ncc.nsw.gov.au

Web: www.ncc.nsw.gov.au

Edition 1: August 1999

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<tr>
<td>5. Principles</td>
<td>3</td>
</tr>
<tr>
<td>6. Rules &amp; procedures</td>
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</table>

Table | Rules & procedures for ‘public voice’ | 5 |
Record of approval & amendment

Policy title
Public Voice (1999); policy for enabling the public to address Council meetings.

File
60/00039/00023/20

Draft policy
The draft policy was publicly exhibited between 3 May 1999 and 31 May 1999 at the following venues:
Newcastle City Council Customer Enquiry Centre; Newcastle Regional Library;
and Hamilton, Mayfield, Lambton, New Lambton, Wallsend, Beresfield,
Adamstown and Stockton Libraries.

Approval
Approved by the Council on 20 July 1999 (Management Issues Committee Item No. 115).

Commencement
Commenced operation on 1 September 1999.

Amendments
This Policy is reprinted with the following amendments:

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<thead>
<tr>
<th>Amendment No.</th>
<th>Public exhibition period</th>
<th>Date approved</th>
<th>Date commenced</th>
</tr>
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<tbody>
<tr>
<td>No amendments to date</td>
<td>........................................</td>
<td></td>
<td></td>
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</table>

Reprint history

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<th>Printing date</th>
<th>Incorporates amendments up to:</th>
</tr>
</thead>
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<td>1</td>
<td>August 1999</td>
<td>.....</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Background

‘Public voice’ refers to the practice whereby part of regular Council meetings are set aside for members of the public to address their councillors. Public voice provides a mechanism for communicating opinions or ideas directly to councillors. It also enables the Council to hear a variety of alternative viewpoints from within the community. This is particularly important when contentious or other matters of public importance are being deliberated.

Newcastle City Council introduced public voice in 1992 (then referred to as ‘public access’). It has proved to be very popular with the community. The Council is committed to maintaining and improving public voice, and promoting the positive contribution it can make to its decisions.

This Policy represents a complete review of all existing guidelines and procedures for enabling the public to address Council meetings. To promote a more focused input to Council meetings, three types of sessions for public voice will be regularly convened:

- leading issues sessions - for policy issues of high public importance
- development sessions - for development-related matters
- general sessions - for all other matters.

Public voice sessions are for the exchange of information. They are not a decision-making forum. Decisions on matters raised are generally determined at a later meeting.

The Policy recognises that public voice sessions need to be fair and balanced. Parties with an alternative or opposing viewpoint will be given the opportunity to address the Council on an equal basis.

The Policy also recognises that disputes concerning development matters are best resolved by mediation processes. Such processes are outlined in the related Dispute Resolution Policy 1999. However, provision is made for parties to make an address to the Council concerning a development matter where:

- mediation has been terminated without agreement
- one or more of the parties refuses to enter mediation
- the issues raised are of a general or policy nature.

Public Voice promotes the Council’s responsiveness to local concerns and issues. It makes an important contribution to our civil society and local democracy.
1. Preliminary

Title
This policy is called Public Voice (1999): policy for enabling the public to address Council meetings ("the Policy").

Status
The Policy is:
- adopted by resolution of the Council
- a policy document for the purposes of the Freedom of Information Act 1999
- required to be listed in the Council’s Summary of Affairs published under that Act.

Commencement
The Policy commences on a date to be appointed by the Council.
NOTE: The policy commenced on 1 September 1999 (see Management Issues Committee item 115 of 20 July 1999).

Previous policies
The previous policy entitled ‘Public Access Meetings’, adopted by the Council on 28 January 1992, is hereby repealed.

Related policies

Review of policy
The Policy is to be reviewed within two years of the date upon which it commenced.

2. Purpose

The purpose of the Policy is to enable members of the public to formally address Council meetings during designated “public voice sessions”.

The Policy specifies:
- objectives and principles for public voice sessions
- criteria for granting applications for an address to the Council
- rules and procedures for public voice sessions.

3. Objectives

The Policy has the following objectives:
- to establish an orderly process whereby members of the public may communicate opinions or concerns directly to councillors by way of an address to the Council
- to enable the Council to hear a variety of alternative viewpoints from within the community
- to enable persons to bring before the Council important information concerning new ideas or recent developments that are relevant to local government
- to promote the orderly and balanced determination of planning and development proposals
- to avoid unnecessary delay in the determination of development matters
- to ensure consistency and fairness in all procedures relating to:
  - determining applications for an address to the Council
  - convening public voice sessions.

To add value to communication programs that facilitate involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and coordination of local government (S81) Local Government Act 1993.

4. Definitions

In this Policy, the following expressions have special meanings.

Address to the Council: This is a formal spoken address made by a member of the public at a Council or Council Committee meeting.
Leading issues session: a public voice session reserved for short presentations on significant issues of a general, strategic or policy nature.

Development application (DA): a development application is a formal request for permission to carry out development, and includes plans and drawings, a statement of environmental effects and a completed application form.

Development matters: any matter concerning existing or proposed development, a development application, local environmental plan, development control plan or other development-related policy or plan.

Development session: a public voice session reserved for short presentations relating to development applications or other development matters.

Dispute Resolution Co-ordinator: the Dispute Resolution Co-ordinator is an employee of Newcastle City Council who manages and coordinates the implementation of Newcastle Dispute Resolution Policy 1999.

Explanatory meeting: this is a pre-mediation meeting held separately with each party to a dispute in accordance with the Dispute Resolution Policy 1999. Its purpose is to provide each party with sufficient information to enable them to effectively participate in a mediation or public voice session.

The meeting provides an opportunity to:
• provide a full explanation of relevant matters
• ask questions about technical details
• clarify issues of concern
• make arrangements for the mediation or public voice session.

General session: a public voice session reserved for short presentations on all matters other than development matters.

Mediation: this is a voluntary process in which the parties to a dispute, with the assistance of a neutral third party (the ‘mediator’), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. Mediation is carried out in accordance with the Newcastle Dispute Resolution Policy 1999.

Public voice session: this is a session of a Council or Council Committee meeting specifically set aside for members of the public to address the Council in accordance with this Policy. There are three types of public voice sessions:
• leading issues sessions
• development sessions
• general sessions.

Submission period: the period during which submissions relating to a development matter that is publicly notified must be received by the Council. Relevant submission periods are specified by Development Control Plan No. 49 - Public Notification.

5. Principles

The Policy embodies the following principles.

Participation in Council meetings

Individuals or groups should be able to express their views or opinions on local government matters directly before the assembled Council.

Orderly conduct

Public voice sessions should be held according to clearly defined rules and procedures so as not to interfere with the orderly and timely conduct of Council meetings.
**Natural justice**

Where a person has been granted an address to the Council, other persons with an opposing or alternative viewpoint should be afforded an equal opportunity to express their concerns or interests.

**Criteria for determining applications**

Applications for an address to the Council should be determined according to criteria that ensures that all matters raised are:

- within the scope of the Council’s jurisdiction
- not vexatious, defamatory or an abuse of process
- to the overall benefit of the Council’s balanced understanding of the subject.

**Avoidance of delay**

Public voice sessions relating to development matters should be scheduled so as to promote the orderly determination of development applications.

**Adequate preparation**

Persons who are given the opportunity to address the Council should be given adequate time in which to prepare their presentation.

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**6. Rules and procedures**

Rules and procedures relating to determining applications for an address to the council and the holding of public voice sessions are as outlined in the following Table.
### TABLE: Rules & procedures for ‘public voice’

#### A. Scope of sessions

<table>
<thead>
<tr>
<th>Leading issues sessions</th>
<th>Development sessions</th>
<th>General sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>To provide short presentations relating to significant issues of a general, strategic or policy nature.</td>
<td>To provide short presentations relating to development applications or other development-related matters.</td>
<td>To provide short presentations relating to issues other than development matters.</td>
</tr>
</tbody>
</table>

#### B. Frequency of sessions

<table>
<thead>
<tr>
<th>Leading issues sessions</th>
<th>Development sessions</th>
<th>General sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once per month.</td>
<td>Twice per month.</td>
<td>Twice per month.</td>
</tr>
</tbody>
</table>

#### C. Lodging an application

<table>
<thead>
<tr>
<th>Leading issues sessions</th>
<th>Development sessions</th>
<th>General sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications are to be made on the approved form, and must identify the name of the person(s) and the proposed subject matter. Forms may be forwarded to the Council by mail or fax, or lodged in person at the Customer Enquiry Centre.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### D. Criteria for determining applications

**Leading issues sessions**

- The proposed subject matter satisfies at least one of the following:
  - The issues are of a strategic or policy nature
  - The issues are of major public interest or public importance
  - The address will introduce the Council to important new ideas or recent developments in a field relevant to the Council’s functions or services
  - The address relates to a development site or proposal that is of state, regional or city-wide significance.

**Development sessions**

- Each of the following three criteria must be satisfied:
  - One or more parties have refused to enter mediation under the Dispute Resolution Policy 1999
  - The application is lodged prior to the end of the applicable submission period (DCP 49)
  - The proposed subject matter relates to issues over which the Council has a discretion to refuse or modify the development proposal (eg considerations under section 79C, EP&A Act 1979)

Matters mediated under the Dispute Resolution Policy 1999 must satisfy one of the following:

- Mediation was terminated without agreement, and the application to address the Council was lodged by the next working day following termination of mediation
- The terms of the mediation agreement are not supported by the Council’s assessment officer due to public interest or other considerations
- There are important issues of a general or policy nature that need to be determined.
E. Processing of applications

Leading issues sessions
Applications are to be initially processed by the Council Services Team (Council Services Co-ordinator) and determined by the Senior Management Team.

Development sessions
Applications are to be initially processed by the Dispute Resolution Co-ordinator and determined by the relevant Divisional Director, with the General Manager delegated to deal with requests at his/her discretion. The Dispute Resolution Coordinator may arrange an Explanatory Meeting where this is considered appropriate.

General sessions
Applications are to be initially processed by the Council Services Team (Council Services Co-ordinator). Applications are to be determined by the Divisional Director most relevant to the subject matter of the application.

If an application is granted, the applicant will be contacted to confirm spokesperson(s) and to further clarify the purpose and subject matter of the proposed address to the Council.

Reasonable enquiries are to be made as to persons representing an alternative or opposing viewpoint on the matter. At least one such person is to be invited to address the Council on an equal basis. Where an application is granted to an objector to a development matter, an invitation shall be made to the proponent for that development matter.

Each of the parties is to be advised (by post, fax or e-mail) of the scheduled date for the address to the Council, together with general information about making an address. Confirmation of acceptance is to be obtained by telephone.

If an application is disallowed (because it does not satisfy the criteria in Item D above), the applicant is to receive a written statement indicating the reasons for refusal. It should be noted that the Council may request any matter to be listed in any of the appropriate public voice sessions.

F. Scheduling

Leading issues sessions
The address is to be scheduled for the next available session, or a later session if requested by the applicant (generally the fourth week of the month). Participants are to be provided at least one week’s notice.

Development sessions
The address is to be scheduled for the week preceding the Development Approvals Committee meeting at which the development matter is proposed to be determined (generally the first and third week of the month). Participants are to be provided at least one week’s notice.

General sessions
The address is to be scheduled for the next available session, or a later session if requested by the applicant (generally the first and third week of the month). Participants are to be provided at least one week’s notice.

G. Background information and site inspections

Leading issues sessions
The relevant Divisional Director is to prepare background material for distribution to councillors in the week preceding the scheduled address. Where the matters to be raised in an address to the Council warrant a site inspection, the inspection should, as far as possible, be scheduled for the same day as the address. The relevant Divisional Director is to determine whether or not an inspection is to be scheduled.

H. Conduct of sessions

The following time limits will be applied at the discretion of the Chair and with the consent of the meeting:

Leading issues sessions
Sessions shall be limited to 2 hours unless the length of other business for the night allows a longer period.
Presentations shall be limited to 15 minutes.

Development sessions
Sessions shall be limited to 1 hour unless the length of other business for the night allows a longer period.
Speakers shall be limited to 5 minutes each.

General sessions
Sessions shall be limited to 1 hour unless the length of other business for the night allows a longer period.
Speakers shall be limited to 5 minutes each.

Speakers must strictly observe the time limits referred to above. Questions to speakers are not permitted during their address. A period for questions from councillors will be provided after all parties have completed their address.
Up to 2 speakers representing a single party may make an address at a given Development Session or General Session.
Speakers must confine their address to the issues identified in their application. A short written summary of the address may be presented to the Stenographer prior to commencement of the session. Audio visual equipment is available on request.

Speakers shall refer and speak to members of the Council by their official designation as Lord Mayor, Deputy Lord Mayor, Chairperson and Councillor, as the case may be. As sessions are open to the public and on public record, speakers are cautioned not to make personal reflections on any person nor make statements that may cause offence or be defamatory.
ITEM-77  CCL 28/08/18 - DRAFT PLANNING AGREEMENT - 5 HALL STREET MARYVILLE

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER REGULATORY AND ASSESSMENT

PURPOSE

The purpose of this report is to obtain a Council resolution to place the draft Planning Agreement - 5 Hall Street Maryville on public exhibition pursuant to clause 25D of the Environmental Planning and Assessment Regulation 2000.

RECOMMENDATION

1 Council resolves to:
   i) Place the draft Planning Agreement - 5 Hall Street Maryville on public exhibition for 28 days.
   ii) Receive a report back on the draft Planning Agreement following the public exhibition period.

KEY ISSUES

2 Development Consent (DA2016/01024) was granted on 21 March 2017 for demolition of structures, erection of 33 x two-storey dwellings, associated site works and staged 33 lot strata subdivision. The development consent included a requirement for the developer to pay Council a development contribution of $82,770.

3 The development application was accompanied by a Letter of Offer by the Developer to enter into a Planning Agreement in lieu of the payment of development contributions. Council officers and the developer negotiated a draft Planning Agreement based on the Letter of Offer. A modification was approved to DA2016/01024 to defer the timing of payment of the development contribution to allow a draft Planning Agreement to be reported to Council and publically exhibited.

4 The draft planning agreement (Attachment A), requires the developer to construct the following works:
   i) Demolish, remove and replace the existing 2.5m wide cycleway with a new concrete 3.0m wide cycleway along the length of the development boundary, adjacent to Throsby Creek.
   ii) Construct a dedicated walkway adjacent to cycleway including hand rails, seating and landscaping.
5 The works proposed under the draft Planning Agreement total approximately $277,500, which significantly exceeds the development contribution required to be paid to Council.

6 The works are to be completed on land owned by Hunter Water, which is under the care and control of Council. Hunter Water’s approval has been sought and gained through the development assessment process. Hunter Water will be further consulted through the exhibition of the draft Planning Agreement.

FINANCIAL IMPACT

7 The draft Planning Agreement requires the works to be completed by the developer as well as any ratification of defects during the Defects Ratification Period. The Developer is also required to maintain the works for a 12 month period.

8 The implementation and monitoring of the Planning Agreement by Council staff will be undertaken within the current allocated work program and budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

9 The draft Planning Agreement aligns with the following Community Strategic Plan Directions:

Liveable Built Environment

5.2b Plan for an urban environment that promotes active and healthy communities.

5.4b Plan, provide and manage infrastructure that continues to meet community needs.

Open and Collaborative Leadership

7.1a Encourage and support long term planning for Newcastle, including implementation, resourcing, monitoring and reporting.

7.2a Conduct Council business in an open, transparent and accountable manner.

7.3a Provide opportunities for genuine engagement with the community to inform Council's decision-making.

IMPLEMENTATION PLAN/IMPLICATIONS

10 The draft Planning Agreement includes provisions in Part 2 relating to the carrying out of work. This section outlines the process for the approval and completion of work as well as the rectification of defects and maintenance of works by the developer.
11 The draft Planning Agreement includes a process for resolving disputes and a requirement that Council will not issue the Final Occupation Certificate for the development unless the works have been completed to Council’s satisfaction.

RISK ASSESSMENT AND MITIGATION

12 The negotiation and drafting of the draft Planning Agreement has been undertaken to be consistent with Council’s Planning Agreement Policy. This Policy was adopted to regulate the way in which Council will consider, accept and implement offers made by developers to enter into Planning Agreements.

13 Adherence to the legislative framework outlined in Council’s Policy and the Environmental Planning and Assessment Act 1979 reduces the risk to both the Developer and Council.

RELATED PREVIOUS DECISIONS

14 DA2016/01024 was granted development consent on 21 March 2017.

CONSULTATION

15 Internal consultation with Council staff in Governance and Infrastructure and Property has been undertaken during the preparation of the draft Planning Agreement. Concurrence from Hunter Water was also sought during the assessment of the development application.

16 Consultation with adjoining land owners and the community is proposed as part of the exhibition period.

BACKGROUND

17 Following receipt of a Letter of Offer from the developer, the attached draft Planning Agreement has been negotiated between Council officers and the Developer to provide an alternative to the payment of a monetary section 7.12 levy (previously Section 94A of the Environmental Planning and Assessment Act 1979).

OPTIONS

Option 1

18 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

19 Council resolves not to exhibit the draft Planning Agreement. This is not the recommended option as it will not allow the Developer to construct a new cycleway and footpath in lieu of the payment of the s7.12 levy.
REFERENCES

ATTACHMENTS

Attachment A: Draft Planning Agreement - Cape Wickham Pty Ltd
Deed

5 Hall Street Maryville - Velocity
Planning Agreement

Under s7.4 of the Environmental Planning and Assessment Act 1979

Newcastle City Council

Cape Wickham Pty Ltd

[Insert Date]
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(Between Council and Developer)  

PLANNING AGREEMENT

Parties

Newcastle City Council of 282 King Street, Newcastle New South Wales 2300
(Council)

And

Cape Wickham Pty Ltd as trustee of the Cape Wickham Unit Trust of PO Box 93
Lorn, New South Wales 2300 (Developer).

Background

A. Cape Wickham Pty Ltd was granted Development Consent DA2016/01024 by

B. That Development Application was accompanied by an offer by the Developer
to enter into this Deed of Agreement to make Development Contributions
towards the Public Infrastructure.

C. Council has accepted an offer made by Cape Wickham Pty Ltd and the parties
enter into this Deed of Agreement to give effect to the requirements of
DA2016/01024 and the agreement reached between them in connection with
the Development.

Operative provisions

Part 1 - Preliminary

1 Definitions and interpretation

1.1 In this Agreement the following definitions apply:

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

Dealing, in relation to the Land, means, without limitation, selling
transferring, and assigning, mortgaging, charging, encumbering or
otherwise dealing with the Land.

Development means Development Consent DA2016/01024 for the
construction of 31 Townhouses and associated civil works and
infrastructure.
Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Instrument Change means Local Environmental Plan.

Land means Lot 100 DP 746334, known as 5 Hall Street Maryville.

Party means a party to this Deed of Agreement, including their successors and assigns.

Public Infrastructure means Facilities identified in Schedule annexed hereto and marked 'A'.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Work means the physical result of any building, engineering or construction work in, on, over or under land, required to be carried out by the Developer under this Deed of Agreement.

Work Items means Items which require Works to be carried out under this Deed of Agreement.

2.1 In the interpretation of this Deed of Agreement, the following provisions apply unless the context otherwise requires:

(a) Headings are inserted for convenience only and do not affect the interpretation of this Deed of Agreement.

(b) A reference in this Deed of Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

(c) If the day on which any act, matter or thing is to be done under this Deed of Agreement is not a business day, the act, matter or thing must be done on the next business day.

(d) A reference in this Deed of Agreement to dollars or $ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

(e) A reference in this Deed of Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

(f) A reference in this Deed of Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

(g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed of Agreement.
(h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

(i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

(j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

(k) References to the word 'include' or 'including are to be construed without limitation.

(l) A reference to this Deed of Agreement includes the agreement recorded in this Agreement.

(m) A reference to a party to this Deed of Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

(n) Any schedules and attachments form part of this Deed of Agreement.

2 Status of this Deed of Agreement
The Parties agree this Deed of Agreement is a planning agreement within the meaning of s7.4 (1) of the Act.

3 Commencement of this Deed of Agreement
This Deed commences on the date which it has been executed by all Parties.

4 Application of this Deed of Agreement
This Agreement applies to:

a) the Land;
b) The Development.

5 Development Contributions to be made under this Deed of Agreement
The Developer is to make Development Contributions to the Council in accordance with Schedule 1 and any other provision of this Deed of Agreement relating to the making of Development Contributions.

6 Application of ss 7.11, 7.12 and 7.24 of the Act to the Development
a) This Deed of Agreement does not exclude the application of 7.24 of the Act to the Development

b) The Parties agree that pursuant to the conditions of Development Consent DA2016/010124; section 7.11 and 7.12 of the Act do not currently apply to the Development.

7 Registration of this Deed of Agreement
This Deed of Agreement is to be registered as provided for in s7.6 of the Act.

8 Review of this Deed of Agreement
8.1 The Parties are to review this Deed of Agreement if either Party considers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed of Agreement.
8.2 For the purposes of clause 8.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits, or enables the Council or any other planning authority to restrict or prohibit, any aspect of the Development, or if the approved number of units under the Development Consent falls below 31 units.

8.3 For the purposes of addressing any matter arising from a review of this Deed of Agreement referred to in clause 8.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed of Agreement.

Part 2 - Provisions relating to the Carrying out of Work

9 Design and Construction
   a) The Developer will prepare construction drawings for all Work Items included in Schedule 1, in accordance with the relevant Council Specification Documents, Australian Standards and other laws applicable to the work and will submit them to Council.
   b) The Developer will amend the construction drawing to be consistent with any comments received by Council in respect of the Work Items included in Schedule 1.
   c) If the Developer is required by the Council to prepare or modify a design or specification relating to the Work Items in Schedule 1 the Developer is to bear all costs relating to the preparation or modification and approval of the design and specification.

10 Standard of Construction Work
   a) Any work that the Developer is required to carry out under this Deed of Agreement is to be carried out in accordance with:
   b) The requirements of any relevant Approval issued by a relevant Authority,
   c) Any Australian standards and other laws applicable to the Work,
   d) The Council specification Documents and,
   e) In a proper and workmanlike manner, complying with current industry practice and standards relating to the Work.

11 Completion of Work
   a) The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed of Agreement.
   b) The Council is to inspect the Work the subject of the notice referred to in clause 11(a) within 14 days of the date specified in the notice for completion of the Work.
   c) Work is completed for the purposes of this Deed of Agreement when the Council, acting responsibly, gives a certificate to the Developer to that effect, and Council can only withhold the certificate if the Work is not completed in accordance with this Deed of Agreement.
12 Rectifications of Defects

a) During the Defects Liability Period, the Council may serve upon the Developer a Rectification Notice.

b) The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.

c) The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been served upon it under clause 12(a).

d) In this clause:

- Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

- Defects Liability Period means the period of 12 months commencing on the day immediately after the Council accepts responsibility for a Work under clause 12.

- Rectification Notice means a notice in writing

  a) identifying the nature and extent of a Defect,

  b) specifying the works or actions that are required to Rectify the Defect,

  c) specifying the date by which or the period within which the Defect is to be rectified.

13 Works-as-executed-plan

a) No later than 60 days after a Work is completed for the purposes of this Deed of Agreement, the Developer is to submit to the Council a full works-as-executed-plan for the Work.

b) The Developer, being the copyright owner in the plan referred to in clause 13(a), gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed of Agreement.

14 Maintenance and management of Works

a) The Parties may, by agreement in writing, specify Work Items to which the Maintenance Period applies and the standard and other particulars of maintenance required.

b) If the Maintenance Period applies to a Work, the Developer is to maintain the Work during that Period, in accordance with the standard and other particulars of maintenance agreed between the Parties.

c) Despite any other provision of this Deed of Agreement, if the Developer has complied with its obligations under this clause, the Council cannot make any claim, objection or demand about the state or condition of a Work referred to in clause 14(a) after the end of the Maintenance Period for that Work.

d) In this clause, Maintenance Period means the period of 12 months commencing on and from the date that Council accepts responsibility for a Work under clause 11.
15 Registration of this document

Registration
a) This document must be registered on the title of the Land pursuant to section 7.6 of the Act.

Obligations of the Developer
a) The Developer must:
   i. do all things necessary to allow the registration of this document to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and
   ii. pay any reasonable costs incurred by Council in undertaking that registration.

Removal from Title of the Land
Council will do all things necessary to allow the Developer to remove the registration of this document from the title of the Land, where the Developer has completed the Works.

The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.

Part 3 - Dispute Resolution

16 Dispute Resolution Procedure
a) If a dispute arises out of or relates to this Deed of Agreement (other than a dispute in relation to the termination, or the proposed termination, of this agreement), a party must not commence any court or other proceedings relating to the dispute unless it has first complied with the following procedure:

b) the party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute;

c) on receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute using informal dispute resolution techniques such as mediation, expert evaluation, arbitration or similar methods agreed by them;

d) if the parties do not agree within 10 days of receipt of the notice (or such further period as the parties agree in writing) as to:
   • the dispute resolution method and procedures to be adopted;
   • the timetable for all steps in those procedures; and
   • the selection and compensation of the independent person required for such method,

e) the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales.

f) The costs of any such dispute resolution procedure will be shared equally between the Developer and the Council.

Other Proceedings

Nothing in this clause prevents any party instituting proceedings to seek urgent injunctive or interlocutory relief in respect of a dispute or any matter arising under this Deed of Agreement.
17  Enforcement
Council will not issue Final Occupation Certificate until the Work Items are completed in accordance with the staging of works set out in annexure A.

18  Notices
1.2  Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed of Agreement is only given or made if it is in writing and sent in one of the following ways:

(a) Delivered or posted to that Party at its address set out below.
(b) Faxed to that Party at its fax number set out below.
(c) Email to that Party at its email address set out below.

Council
Attention: Shannon Turkington
Address: 282 King Street, Newcastle NSW 2300
Fax Number: 02 4974 2222
Email: sturkinton@ncc.nsw.gov.au

Developer
Attention: Peter Childs
Address: PO Box 93, Lorn NSW 2300
Fax Number: 02 4015 2611See
Email: PeterChilds@mavidgroup.com.au

1.3  If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

1.4  Any notice, consent, information, application or request is to be treated as given or made at the following time:
(a) If it is delivered, when it is left at the relevant address.
(b) If it is sent by post, 2 business days after it is posted.
(c) If it is sent by fax, as soon as the sender receives from the sender’s fax machine a report of an error free transmission to the correct fax number.

1.5  If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

19  Approvals and consent
Except as otherwise set out in this Deed of Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party’s absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

20  Assignment and Dealings
Nil
21 Costs
Each party is responsible for their own costs of negotiating, preparing, executing, stamping and registering the Deed of Agreement.

22 Further acts
Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

23 Governing law and jurisdiction
This Deed of Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

24 Joint and individual liability and benefits
Except as otherwise set out in this Deed of Agreement, any agreement, covenant, representation or warranty under this Deed of Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

25 No fetter
Nothing in this Deed of Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

26 Representations and warranties
The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

27 Severability
If a clause or part of a clause of this Deed of Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed of Agreement, but the rest of this Deed of Agreement is not affected.

28 Modification
No modification of this Deed of Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

29 Waiver
The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed of Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
30 GST
If any Party reasonably decides that it is liable to pay GST on a supply made to
the other Party under this Deed of Agreement and the supply was not priced to
include GST, then recipient of the supply must pay an additional amount equal
to the GST on that supply.
Execution

Dated:

Executed as a Deed

SIGNED SEALED AND DELIVERED by NEWCASTLE CITY COUNCIL

(Authorised Officer Signature)

(Authorised Officer Name)

in the presence of:

(Witness Signature)

(Witness Name)

SIGNED SEALED AND DELIVERED by CAPE WHICKAM PTY LTD

in accordance with s.127 of the Corporations Act 2001 (Cth)

(Director/Secretary Signature)

(Director/Secretary Name)

in the presence of:

(Witness Signature)

(Witness Name)
Schedule 1

(Clsule 5)

Development Contributions

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
<th>Approximate Value</th>
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<tr>
<td>Item</td>
<td>Public Purpose</td>
<td>Manner &amp; Extent and Key Elements</td>
<td>Timing</td>
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<td>1</td>
<td>Cycleway/walkway</td>
<td>Demolish, remove and replace existing 2.5m cycleway with new concrete 3.5m cycleway along foreshore (approximately 350 lin m x $250)</td>
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<td>2</td>
<td>Cycleway/walkway</td>
<td>Provision of dedicated walkway adjacent cycleway (width varies from 1.8 - 2.4m including hand rails / seating etc (approximately 200 lin m x $950)</td>
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ITEM-78  CCL 28/08/18 - DRAFT PLANNING AGREEMENT - 464-470 KING STREET NEWCASTLE

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER REGULATORY AND ASSESSMENT

PURPOSE

The purpose of this report is to obtain a Council resolution to place the draft Planning Agreement for 464-470 King Street Newcastle (the “Verve Residences”) on public exhibition pursuant to clause 25D of the Environmental Planning and Assessment Regulation 2000.

RECOMMENDATION

1 Council resolves to:

   i) Place the draft Planning Agreement for 464-470 King Street, Newcastle on public exhibition for 28 days.

   ii) Receive a report back on the draft Planning Agreement following the public exhibition period.

KEY ISSUES

2 Development Consent (DA2016/00346) was granted on 27 September 2016 for demolition of buildings, erection of 20 storey mixed use development including 197 residential apartments, 3 ground level retail units, 2 first floor commercial units, 4 floors of parking, associated site works and 202 lot strata subdivision. The development consent included a requirement for the developer to pay Council a development contribution of $1,472,537.00.

3 The development application was accompanied by a Letter of Offer by the Developer to enter into a Planning Agreement in lieu of the payment of development contributions. A modification was approved to DA2016/00346 (21 August 2017) to defer the timing of payment of the development contribution to allow a draft Planning Agreement to be negotiated and reported to Council.

4 The draft Planning Agreement (Attachment A), requires the developer to:

   i) construct a pedestrian and cycle link between King Street and Hunter Street Newcastle West, adjacent to Cottage Creek.

   ii) dedication of pedestrian and cycle link to Council.

   iii) provision of public art integrated into the building and pedestrian / cycle link to the satisfaction of Council.
5 DA2016/00346 includes a condition relating to the payment of development contributions as well as a requirement for the developer to integrate $736,269 worth of public art into the design of their development. The draft Planning Agreement has been drafted to include a total value of $2,208,806.00 of work, rather than specifically including a value for each item. This approach allows flexibility in the design and delivery of the pedestrian and cycle link and public art.

6 The Hunter Street Revitalisation Final Strategic Framework adopted by Council in 2010, shows the proposed pedestrian and cycle link as an opportunity to provide connectivity and green space enhancement to the West End. Council has recently acquired 679A-681 Hunter Street Newcastle West to assist in the delivery of this project.

FINANCIAL IMPACT

7 The draft Planning Agreement will have a financial impact on Council due to costs associated with the long-term ownership and maintenance of the land and infrastructure proposed to be dedicated to Council. To minimise cost associated with the initial transfer of land, the Planning Agreement includes a 12 months maintenance period and a rectification of defects period.

8 The implementation and monitoring of the Planning Agreement by Council staff will be undertaken within the current allocated work program and budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

9 The draft Planning Agreement aligns with the following Community Strategic Plan Directions:

Liveable Built Environment

5.2b Plan for an urban environment that promotes active and healthy communities.

5.4b Plan, provide and manage infrastructure that continues to meet community needs.

Open and Collaborative Leadership

7.1a Encourage and support long term planning for Newcastle, including implementation, resourcing, monitoring and reporting.

7.2a Conduct Council business in an open, transparent and accountable manner.

7.3a Provide opportunities for genuine engagement with the community to inform Council's decision-making.
IMPLEMENTATION PLAN/IMPLICATIONS

10 The negotiation and public exhibition of the draft Planning Agreement will be completed in accordance with Council’s Planning Agreements Policy and the requirements of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

RISK ASSESSMENT AND MITIGATION

11 The negotiation and drafting of the draft Planning Agreement has been undertaken to be consistent with Council’s Planning Agreement Policy. This Policy was adopted to regulate the way in which Council will consider, accept and implement offers made by developers to enter into Planning Agreements.

12 Adherence to the legislative framework outlined in Council’s Policy and the *Environmental Planning and Assessment Act 1979* reduces the risk to both the Developer and Council.

RELATED PREVIOUS DECISIONS

13 DA2016/00346 was granted on 27 September 2016 for the demolition of buildings, erection of 20 storey mixed use development including 197 residential apartments, 3 ground level retail units, 2 first floor commercial units, 4 floors of parking, associated site works and 202 lot strata subdivision.

CONSULTATION

14 Internal consultation has been undertaken with Infrastructure and Property.

15 Consultation with adjoining land owners and the community is proposed as part of the exhibition period.

BACKGROUND

16 A Letter of Offer to enter into a Planning Agreement was submitted with the supporting documentation for DA2016/00346. The attached draft Planning Agreement has been negotiated between Council officers and the Developer to provide an alternative to the payment of a monetary section 7.12 levy (previously Section 94A of the *Environmental Planning and Assessment Act 1979*).

OPTIONS

Option 1

17 The recommendation as at Paragraph 1. This is the recommended option.
Option 2

18 Council resolves not to exhibit the draft Planning Agreement. This is not the recommended option as it will not allow the Developer to construct a new pedestrian and cycleway link in lieu of the payment of the s7.12 levy.

REFERENCES

ATTACHMENTS

Attachment A: Draft Planning Agreement - Windham Developments Pty Limited
Planning Agreement
THIS PLANNING AGREEMENT is made on the day of 2018

PARTIES

NEWCASTLE CITY COUNCIL ABN 25 242 068 129 of 282 King Street Newcastle in the State of New South Wales (Council)

AND

WINDHAM DEVELOPMENTS PTY. LIMITED ACN 604 854 300 As Trustee for THE PARK UNIT TRUST ABN 96 604 854 300 of Suite 6, 5-11 Hollywood Avenue Bondi Junction in the said State (Developer)

BACKGROUND

A. By Letter of Offer dated 14 October 2015 the Developer offered to construct a pedestrian and cycle link between King Street to the northern end of Lot 3 DP93753.

B. On or about 4 April 2016 the Developer made a Development Application to the Council for Development Consent to carry out the Development on the Land.

C. On 21 August 2017 the Council pursuant to the provisions of Section 96 (as it then was) of the Environmental Planning & Assessment Act modified the conditions of consent referred to in the Notice of Determination dated 27 September 2016, as set out in the copy of the letter dated 21 August 2017 which is annexed to this Agreement as Schedule 2A.

D. The Developer has agreed to make the Development Contributions, as hereinafter set out, towards the Public Facilities.

E. The Developer is the Landowner of the Lot 3 in DP93753 and Lot 2 in DP81601.

OPERATIVE PROVISIONS

1. Planning Agreement under the Act
2. The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 5 of Part 4 of the Act.
3. Application of this Agreement
   This Agreement applies to the Land, being that part of Lot 3 in DP93753 and that part of Lot 2 in DP81601 shown on the Land Dedication Plan which is annexed to this Agreement at Schedule 3 and forms part of this Agreement and Development Application Number DA2016/00346 and any subsequent amendment approved by the Council.
   3.1 Operation of this Agreement
      This Agreement commences on the date on which it has been executed by all parties.
   3.2 The party who executes this Agreement last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Agreement to any other person who is
a party.

4. Definitions and Interpretation

4.1 In this Agreement the following definitions apply:

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

**Agreement** means this Agreement and includes any Schedules, annexures and appendices to this Agreement.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action but does not include proceedings to enforce this Agreement in the Land and Environment Court or any Court of Appeal from that Court.

**Construction Certificate** has the same meaning as in the Act.

**Costs** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Dealing** in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Dedication Land** has the same meaning as Land.

**Development** means the development of the Land by way of creation of a pedestrian/cycle link between King and the northern end of Lot 3 DP593753 or an Extended Work Zone as agreed by both parties in accordance with Conditions 3 (a) and 15 (a) of Development Application 2016/00346.02 including but not limited to a footpath made from concrete and other materials, hard and soft landscaping elements including planter boxes and tree pits and trees, plants and shrubs, street lights and fencing/valuining along the creek edge in accordance with the Council’s requirements.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the dedication of the Land free of cost or the provision of a material public benefit or carrying out of Work but does not include any security or other benefit provided by the Developer to the Council to secure the enforcement of that party’s obligations under this Agreement.

**Extended Work Zone** means any extension of the pedestrian/cycle link from the northern end of Lot 3 DP593753 in the direction of or to Hunter Street.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Land** means that part of Lot 3 in DP593753 and that part of Lot 2 in DP81601 known as part 470 King Street Newcastle West shown in the Land Dedication Plan at Schedule 3 to this Agreement.

**Land Dedication Plan** means the plan and schedules to this Agreement, as amended from time to time, showing the location of the Land to be dedicated.

**Party** means a party to this agreement, including their successors and assigns.
Regulation means the Environmental Planning and Assessment Regulation 2000.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction Work in, on, over or under the Land required to be carried out by the Developer under this Agreement.

Work Items means items which require Work to be carried out under this Agreement.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

a) Headings are inserted for convenience only and do not affect the interpretation of this agreement.

b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

d) A reference in this Agreement to dollars or $ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

f) A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced.

g) A reference to a Clause, part, schedule or attachment is a reference to a Clause, part, schedule or attachment of or to this Agreement.

h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

k) References to the word 'include' or 'including are to be construed without limitation.

l) A reference to this Agreement includes the agreement recorded in this Agreement.

m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

n) Any schedules and attachments form part of this Agreement.

5. Development Contributions to be made under this Agreement

5.1 The Developer is to make Development Contributions to the Council being the dedication of the Land and the Works required to complete the construction of a pedestrian/cycle link
between King Street and the northern end of Lot 3 DPS93753, or an Extended Work Zone as agreed by both parties, in accordance with Conditions 3(a) and 15(a) of Development Application 2016/00346.02.

5.2 The Council is to apply the Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.

6. Application of the Development Contributions

6.1 The Development Contributions made by the Developer under the terms of this Agreement consisting of Work or Work Items must be completed not later than six (6) months after the later of:

(a) the issue of the Final Occupation Certificate in respect of the Building Works and Subdivision the subject of Development Application 2016/00346.02 as varied for the time being and from time to time; and

(b) the registration of the plans of stratum subdivision of Lot 2 DP81601 and Lot 3 DPS93753 situate 464-470 King Street Newcastle West.

6.2 For the purpose of this Clause 6 the parties hereby agree that time is of the essence with respect to performance of each of the parties’ obligations under this Agreement and the Developer will ensure that the Development Contributions to be made by the Developer under the terms of this Agreement consisting of Work or Work Items shall be completed on or before the occurrence of the later of the events referred to in Clause 6.1 (a) and 6.1 (b).

7. Application of Part 7 Division 3 of the Act to the Development/Public Art Works Condition

7.1 The provisions of Part 7 Division 3 of the Act do not apply to the development and by this Agreement are specifically excluded in their application to the Development.

7.2 Subject to the Developer completing the Work by the date set out in Clause 6.1 of this Agreement the Council agrees to and accepts Development Contributions in full satisfaction of the total monetary contribution of $1,472,537.00 (as indexed in accordance with the Development Consent) to be paid to the Council pursuant to Section 94A (as it then was) of the Environmental Planning & Assessment Act 1979 in accordance with condition 3 of the Notice of Determination of Development Application Number DA2016/00346 dated 27 September 2016 (Section 94 Contribution).

7.3.1 For the purpose of calculating the value of the Development Contributions as provided under the terms of this Agreement and the value of the Public Art Feature as referred to in Clause 29 of Notice of Determination of Development Application DA2016/00346 dated 27 September 2016 (Public Art Feature) the Developer will obtain, at its own cost, from a registered valuer a valuation of the Land and Quantity Surveyor’s bill of quantities detailing the costs of the Work and any Work Items forming part of the Development Contributions and a Quantity Surveyor’s Bill of Quantities in relation to the value of the Public Art Feature.

7.3.2 The value of the Development Contributions and the Public Art Feature shall be determined in accordance with the documents referred to in Clause 7.3.1 of this Agreement and the Developer will make available to the Council such documentation as soon as reasonably practicable after receipt of same.

7.3.3 In the event that the value of the Development Contributions exceeds the Section 94 Contribution (“Excess Contribution”) the Excess Contribution will be allocated by the Council in or towards satisfaction, whether in whole or in part, of the value of the Public Art Feature
provided that:-

(a) if the Excess Contribution and the value of the Public Art Feature, as determined in the manner hereinbefore set out, exceeds the amount of $796,269.00 the Council and the Developer will negotiate in good faith to amend the design of the Work and/or any Work Item forming part of the Development Contributions in such a manner so as to ensure that, in these circumstances, the value of the Development Contributions and the value of the Public Art Feature do not exceed $7,208,806.00 being the amount of the Section 94 Contribution and the prescribed value of the Public Art Feature.

8. Procedures Relating to Dedication

8.1 A Development Contribution comprising the dedication of the Land is made for the purposes of this Agreement when:-

8.1.1 a deposited plan is registered in the register of plans held with the Registrar General that:

   a) creates a public reserve under the Local Government Act 1993, or

8.1.2 the Council is given an instrument in registrable form under the Real Property Act 1900 duly executed by the Developer (as Landowner) as transferee that is effective to transfer the title to the Land to the Council when executed by the Council as transferee and registered.

8.2 For the purposes of Clause 8.1.2:

8.2.1 the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the Real Property Act 1900 relating to the Land to be dedicated, and

8.2.2 within 7 days of receiving it from Developer, the Council is to execute it and return it to Developer, and

8.2.3 within 7 days of receiving it from the Council (properly executed), the Developer is to lodge it for registration with the Registrar General, and

8.2.4 the Developer is to do all things reasonably necessary to enable it to be registered.

8.3 The Land required to be dedicated under this Agreement is to be dedicated free of all Registered and unregistered encumbrances and affectations, except as otherwise agreed in writing by the Council.

8.4 If, having used all reasonable endeavours, the Developer cannot comply with Clause 8.3, the Developer may request that Council agree to accept the Land subject to those encumbrances and affectations, and:-

8.4.1 Council cannot withhold its agreement unreasonably if the encumbrance or affectation does not prevent the future use of the Land for the purpose for which it is to be dedicated under this Agreement, unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges, and

8.4.2 in all other cases, Council may withhold its agreement in its absolute discretion.

9. Design and Construction
9.1 Annexed to this Agreement at Schedule Three is the Developer’s Plan for the pedestrian/cycle link between King and the northern end of Lot 3 DP593753 which Developer’s Plan has been accepted and approved by the Council.

9.2 No amendment to this Agreement or any variation to the Work or any Work Items nor the creation of any Extended Work Zone or any Work or Work Items to be incorporated therein, will be effective unless there is agreement in writing made between the Developer and the Council and, if necessary, the lodgement by the Developer with the Council of an Application to amend a Development Approval relating to the Works and/or the lodgement of a Development Application in relation to the Extended Work Zone.

9.3 For the purpose of Clause 9.2 any variation to any Work or Work Item or the creation of an Extended Work Zone and Work or Work Items incorporated therein must comply with Council’s requirement and be consistent with the objectives of the Development Contribution as set out in this Agreement.

9.4 The Developer must not apply for any Construction Certificate or seek any other approvals for a Work item (other than lodging a Development Application) comprising Works unless it has first submitted the construction drawings for the Work item to the Council and considered any comments in respect of Work item from Council.

10. **Standard of Construction of Work**

10.1 Any Work that the Developer is required to carry out under this Agreement is to be carried out in accordance with:-

10.1.1 the requirements of any relevant approval issued by a relevant authority;

10.1.2 any Australian standards and other laws applicable to the Work;

10.1.3 the Council Specification Documents; and

10.1.4 in a proper and workmanlike manner, complying with current industry practice and standards relating to the Work.

10.2 If there is any inconsistency between the requirements of any relevant approval, any Australian standards or laws, or the Council Specification Documents, then the requirements of any relevant Approval, Australian standards or other applicable laws prevail to the extent of the inconsistency.

10.3 The Developer must appoint Council as the certifier in respect of any Works comprising embellishment Works for the purpose of issuing a Construction Certificate in respect of those Works.

11. **Variation to Work**

11.1 The design or specification of any Work that is required to be carried out by the Developer under this Agreement may be varied in accordance with this Clause without the necessity for an amendment to this Agreement.

11.2 For the purposes of Clause 11.1 the Developer may make a written request to the Council to approve:-

a) a variation to the design or specifications of a Work; and/or
b) any variation to the Development Contribution to ensure that the value of the Work and Work Items and the Public Art Feature do not exceed the combined value of the Public Art Feature and the Section 94 Contributions herebefore referred to and for these purposes the Developer will obtain and provide to the Council a Quantity Surveyor’s Bill of Quantities to ensure that the Work and Work Items and Public Art Feature meet the agreed budget figure of $2,208,806.00.

11.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under Clause 11.2.

11.4 In the event of there being an agreement made between the Developer and the Council providing for an Extended Work Zone an amended plan of works as agreed to by the parties will be deemed to form part of this Planning Agreement and in those circumstances the Developer will obtain and provide to the Council a Quantity Surveyor’s Bill of Quantities relating to the value of the Work/Work Items to be carried out by the Developer in the Extended Work Zone based on the amended plan relating to the Extended Work Zone. The Bill of Quantities will be the basis of an account to be submitted by the Developer to the Council for Work or Work Items incorporated into the Extended Work Zone.

11.5 The Council will be responsible to meet the costs of any Work carried out or Work Items included in the Extended Work Zone.

12. Maintenance and Management of Works

12.1 The parties may, by agreement in writing, specify Work items to which the maintenance period applies and the standard and other particulars of maintenance required.

12.2 If the maintenance period applies to a Work, the Developer is to maintain the Work during that period, in accordance with the standard and other particulars of maintenance agreed between the parties.

12.3 The maintenance to be carried out by the Developer is limited to the watering of trees and plants and specifically excludes cleaning of the pedestrian/cycle link and removal of Council bins from the land.

12.4 Despite any other provision of this Agreement, if the Developer has complied with its obligations under this Clause, the Council cannot make any claim, objection or demand about the state or condition of a Work referred to in Clause 12.1 after the end of the maintenance period for that Work.

12.5 In this Clause, maintenance period means the period of twelve (12) months commencing on and from the date that Council accepts responsibility for Work under Clause 13.

13. Acceptance of Risks in Works

13.1 Subject to anything to the contrary in this Agreement, the Council accepts responsibility for the Work and Work Items including but not limited to the loss or destruction of any of the Work or Work Items, on the later of:

13.1.1 when the Work located on Land to be dedicated to Council is completed for the purposes of this Agreement in accordance with Clause 8; or

13.1.2 when the Land on which the Work is located is dedicated to the Council.

13.2 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council (acting reasonably) any loss or damage to a Work Item(s) from any cause whatsoever which occurs before completion of the Work.
14. Access to Land by Council

14.1 The Developer and Developer are to permit the Council, its officers, employees, agents and contractors to enter the Land or any other Land owned or controlled by the Developer or Developer at any time, upon giving reasonable prior notice to:-

14.1.1 inspect, examine or test any Work, Work Items; or

14.1.2 remedy any breach by the Developer in carrying out the Work.

15. Access to Land by Developer

15.1 The Council is to permit the Developer, its officers, employees, agents and contractors to enter and occupy any Land owned or controlled by the Council, including any part of the Land dedicated to the Council, to:-

15.1.1 enable the Developer to carry out any Work under this Agreement that is required to be carried out on that Land, or

15.1.2 perform any other obligation imposed on the Developer by this Agreement.

16. Council’s Obligations relating to Work

16.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement in relation to Work.

17. Protection of People and Property

17.1 The Developer is to ensure to the fullest extent reasonably practicable in carrying out any Work that:-

17.1.1 all necessary measures are taken to protect people and property, and

17.1.2 unnecessary interference with the passage of people and vehicles is avoided; and

17.1.3 nuisances and unreasonable noise and disturbances are prevented.

18. Completion of Work

18.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Agreement.

18.2 The Council is to inspect the Work the subject of the notice referred to in Clause 18.1 within fourteen (14) days of the date specified in the notice for completion of the Work.

18.3 Work is completed for the purposes of this Agreement when the Council, acting reasonably, gives a certificate to the Developer to that effect, and Council can only withhold the certificate if the Work is not completed in accordance with this Agreement.

19. Rectification of Defects

19.1 During the defects liability period, the Council may give the Developer a rectification notice.

19.2 The Developer is to comply with a rectification notice at its own cost according to its terms and to the satisfaction of the Council.
19.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a rectification notice that has been given to it under Clause 19.1.

19.4 In this Clause:-

19.4.1 Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

19.4.2 Defects liability period means the period of three (3) months commencing on the day immediately after the Council accepts responsibility for the Work under Clause 13.

19.4.3 Rectification notice means a notice in writing:-
   a) identifying the nature and extent of a defect;
   b) specifying the Works or actions that are required to rectify the defect;
   c) specifying the date by which the period within which the defect is to be rectified.

20. Works as Executed Plan

20.1 No later than sixty (60) days after the Work is completed for the purposes of this Agreement, the Developer is to submit to the Council a full Works as executed plan for the Work.

20.2 The Developer, being the copyright owner in the plans referred to in Clause 20.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Agreement.

21. Provision of Security

21.1 The Developer is to give the security to the Council when it executes this Agreement

22. Security for Dedication of Land

22.1 If the Developer does not dedicate the Land required to be dedicated under this Agreement, or any part thereof, at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring that Land for compensation in the amount of $1 without having to follow the pre-acquisition procedures under the Just Terms Act.

22.2 The Council is to only acquire Land pursuant to Clause 22.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the Land required to be dedicated under this Agreement.

22.3 Clause 22.1 constitutes an Agreement for the purposes of Section 30 of the Just Terms Act.

22.4 If, as a result of an acquisition referred to in Clause 22.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council for that amount upon a written request being made by the Council or the Council can call on any Security for that purpose.

22.5 The Developer indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land that is required to be dedicated under this Agreement.
22.6 The Developer and Developer are to promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this Clause 22, including without limitation:

22.6.1 signing any documents or forms,
22.6.2 giving Land owner’s consent for the lodgement of any Development Application,
22.6.3 producing certificates of title to the Registrar-General under the Real Property Act 1900, and
22.6.4 paying the Council’s costs arising from this Clause 22.

22.7 In this Clause, Just Terms Act means the Land Acquisition (Just Terms Compensation) Act 1991.

23. Breach of Obligations

23.1 If the Council considers that the Developer is in breach of any obligation under this Agreement it may give a notice to the Developer:

23.1.1 specifying the nature and extent of the breach,
23.1.2 requiring the Developer to Rectify the breach to the Council’s satisfaction, and
23.1.3 specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.

23.2 A notice given under Clause 23.1 is to allow the Developer not less than 28 days (or such further period as the Council considers reasonable in the circumstances) to Rectify the breach.

23.3 If the Developer does not comply with the notice given under Clause 23.1 relating to the carrying out of Work under this Agreement, the Council may step-in and remedy the breach.

23.4 Nothing in Clause 23.3 affects the Council’s other rights to enforce this Agreement.

23.5 Any costs incurred by the Council in remedying a breach in accordance with Clause 23.3 may be recovered by the Council under this Agreement or as a debt due in a court of competent jurisdiction.

23.6 For the purpose of Clause 23.3, the Council’s costs of remedying a breach the subject of a notice given under Clause 23.1 include, but are not limited to:

23.6.1 the costs of the Council’s servants, agents and contractors reasonably incurred for that purpose,
23.6.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
23.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

24. Council to Consult before Enforcing this Agreement

24.1 This Clause applies to any of the Developer’s obligations under this Agreement.
24.2 If the Council reasonably forms the opinion that the Developer has failed to comply with an obligation to which this Clause applies, it is not to enforce this Agreement against the Developer unless it has first notified the Developer in writing of its intention to do so and has consulted with the Developer as to:-

24.2.1 the reason for the non-compliance,

24.2.2 the likely effects of the non-compliance, and

24.2.3 the Developer’s capacity in all of the circumstances to reasonably rectify the non-compliance.

24.3 The Council is not to enforce this Agreement against the Developer unless, after having consulted with the Developer:

24.3.1 it has reasonably formed the opinion the Developer has no reasonable excuse for the non-compliance,

24.3.2 it has notified the Developer in writing that it intends to enforce the Agreement not earlier than 14 days from the date of the notice, and

24.3.3 the notice specifies the enforcement action it intends to take.

24.4 At any time between the date of the notice referred to in Clause 24.3 and the time when the Council takes action to enforce this Agreement, the Developer may notify the Council of a Dispute under Clauses 26 or 27.

24.5 If the Developer notifies the Council in accordance with Clause 24.4, the Council is not to enforce this Agreement against the Developer in relation to the relevant non-compliance unless and until the dispute resolution process under Clauses 26 or 27 has been exhausted without resolution between the parties.

25. Enforcement in Court

25.1 Without limiting any other provision of this Agreement (other than Clause 26), the Parties may enforce this Agreement in any court of competent jurisdiction.

25.2 For the avoidance of doubt, nothing in this Agreement (other than Clause 26) prevents:

25.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates;

25.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

26. Dispute Resolution – Expert Determination

26.1 This Clause applies to a Dispute between any of the Parties to this Agreement about a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert (Expert Determination Dispute) if:

26.1.1 the Parties to the Dispute agree that it can be so determined, or

26.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
26.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

26.3 If a notice is given under Clause 26.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.

26.4 If the Dispute is not resolved within a further 28 days, the Dispute must be referred to the President of the NSW Law Society to appoint an expert to determine the Dispute.

26.5 The expert determination binds the Parties, except in the case of the expert’s fraud or misfeasance.

26.6 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

26.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

27. Dispute Resolution - Mediation

27.1 This Clause applies to any Dispute under this Agreement other than a Dispute to which Clause 27 applies.

27.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

27.3 If a notice is given under Clause 27.2, the Parties are to meet within 14 days of the notice to try to resolve the Dispute.

27.4 If the Dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time, and must request the President of the Law Society, or the President’s nominee, to select a mediator.

27.5 If the Dispute is not resolved by mediation within a further 28 days, or any longer period that may be needed to complete any mediation process which has been started, then the Parties may exercise their legal rights in relation to the Dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.

27.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.

27.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

28. Registration of this Agreement

28.1 In this Clause 28, Dedication Land means any part of the Land which is to be dedicated to Council.

28.2 The Parties agree to register this Agreement for the purposes of Part 7 Clause 7.6 of the Act on the title to the Dedication Land, after Lot 3 in DP93753 and Lot 2 in DP81601 are subdivided to create the Dedication Land as a separate Lot as shown in the Land Dedication Plan at Schedule 3 to this Agreement.
28.3 Within 10 business days of the Developer being notified by LPI of the creation of the part of the Dedication Land as a separate lot, the Developer is to deliver to the Council in registrable form:-

28.3.1 an instrument requesting registration of this Agreement on the title to each lot containing any Dedication Land, executed by the Developer and any other person required by the Registrar-General to execute such instrument, and

28.3.2 the written irrevocable consent of each person referred to in Part 7 Clause 7.6 of the Act to that registration.

28.4 The Developer and Developer at their cost are to:

28.4.1 do such other things as are reasonably necessary to enable registration of this Agreement to occur, and

28.4.2 provide the Council with evidence of registration within 5 days of being notified by the Land and Property Information of such registration.

28.5 If this Agreement is registered on the title to a Lot which contains Dedication Land and that lot is subsequently subdivided such that any of the newly formed lots do not contain any part of the Dedication Land then the Parties agree to do all things as are reasonably necessary to ensure that the Agreement is not registered on the title to those newly formed lots which do not contain the Dedication Land, including by instructing the Registrar-General not to register this Agreement on the title to those lots.

28.6 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land:-

28.6.1 in so far as the part of the Land concerned is not Dedication Land, and

28.6.2 in relation to any other part of the Dedication Land, once the Developer has completed its obligations under this Agreement to the reasonable satisfaction of the Council or this Agreement is terminated or otherwise comes to an end for any other reason.

29. Release

29.1 Each Party releases the other Party from any Claim it may have against the other Party arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the Claim arises because of the other Party’s negligence or default, or if Work is undertaken by one party at the request of another party which Work is not the subject of this Agreement.

30. Indemnity

30.1 Each Party indemnifies the other Party from and against all Claims that may be sustained, suffered, recovered or made against the other Party arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the claim arises because of the other party’s negligence or default or if Work is undertaken by one party at the request of another party which Work is not the subject of this Agreement.

31. Insurance

31.1 The Developer must, during the currency of this Agreement, effect and maintain with a reputable insurer public liability insurance for a minimum amount of Twenty Million Dollars.
31.2 The Developer must ensure that its builder effects and maintains, contractor’s all risk insurance covering the Works and Work items to be carried out by the builder on behalf of the Developer in accordance with the terms of this Agreement, until the Work is completed in accordance with the terms of this Agreement.

32. Notices

32.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:-

a) Delivered or posted to that Party at its address set out below.

b) Faxed to that Party at its fax number set out below.

c) Emailed to that Party at its email address set out below.

Council
Attention:  ##
Address:    ##
Fax Number:  ##
Email:       ##

Developer
Attention:  ##
Address:    ##
Fax Number:  ##
Email:       ##

32.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

32.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:-

32.3.1 If it is delivered, when it is left at the relevant address.
32.3.2 If it is sent by post, 2 business days after it is posted.
32.3.3 If it is sent by fax, as soon as the sender receives from the sender’s fax machine a report of an error free transmission to the correct fax number.

32.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

33. Approvals and Consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party’s absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.
34. **Assignment and Dealings**

Neither party to this Agreement may transfer or assign its rights or obligations under this Agreement without the consent in writing of the other party.

35. **Costs**

Each party will pay their own costs of and incidental to the negotiation, preparation, execution and stamping of this Agreement and any document relating to this Agreement.

36. **Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

37. **Further Acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

38. **Governing Law and Jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

39. **Joint and Individual Liability and Benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

40. **No Fetter**

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

41. **Representations and Warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

42. **Severability**

If a Clause or part of a Clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any Clause or part of a Clause is illegal, unenforceable or invalid, that Clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
43. **Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

44. **Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

45. **GST**

45.1 In this Clause:

- **Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply** and **Tax Invoice** have the meaning given by the GST Law.

- **GST Amount** means in relation to a Taxable Supply the amount of GST payable for the Taxable Supply.

- **GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any other Act or regulation relating to the imposition or administration of the GST.

- **Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

- **Taxable Supply** has the meaning given by the GST Law, excluding (except where expressly agreed otherwise) a supply for which the supplier chooses to apply the Margin Scheme in Working out the amount of GST on that supply.

45.2 Subject to Clause 45.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

45.3 Clause 45.4 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

45.4 No additional amount is payable by the Council under Clause 45.4 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

45.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

45.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies;
45.5.2 that any amounts payable by the Parties in accordance with Clause 45.2 (as limited by Clause 45.4) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.

45.6 No payment of any amount under this Clause 46, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided the recipient with a Tax Invoice or Adjustment Note as the case may be.

45.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.

45.8 This Clause continues to apply after expiration or termination of this Agreement.

46. Trustee Provisions

46.1 The Council acknowledges that:-

46.1.1 The Developer is entering into this Agreement as Trustee for The Park Unit Trust ("Trust") and not in any other capacity.

46.1.2 The Trustee is not liable to the Council or any other person in any capacity other than as Trustee of the Trust.

46.1.3 The liability of the Trustee arising under or in connection with this Agreement is limited to and can be enforced by the Council against the Trustees only to the extent to which it can be satisfied out of any property held by the Trustee out of which the Trustee is actually indemnified for the liability. This limitation applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.

46.1.4 The Council may not sue the Trustee in any capacity other than as Trustee of the Trust, including seeking the appointment of a receiver (except in relation to the property of the Trust), liquidator, an administrator or any other similar person to the Trustee or prove in and liquidation of or affecting the Trustee (except in relation to the property of the Trust).

46.1.5 The Council waives its rights and releases the Trustee from any personal liability in respect of any loss or damage which any of them may suffer as a consequence of a failure of the Trustee to perform its obligations under this Agreement, which cannot be paid or satisfied out of any property held by the Trustee. The provisions of this Clause will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee’s fraud, negligence or willful default.

46.1.6 No attorney, agent or delegate appointed in accordance with this Agreement has authority to act on behalf of the Trustee in any way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or willful default of the Trustee for the purposes of this Clause 46.

47. Explanatory Notes Relating to this Agreement

47.1 The Appendix contains the Explanatory Note relating to this Agreement required by Clause 25E of the Regulations.
47.2 Under Clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not be used to assist in construing this Agreement.
SCHEDULE 1 – LAND

Means that part of Lot 3 in DP933753 and that part of Lot 2 in DP91601 shown on the Land Dedication Plan at Schedule 3 to this Agreement.
SCHEDULE 2 – PLAN OF WORKS
SCHEDULE 2A – NOTICE TO APPLICANT OF DETERMINATION OF APPLICATION TO MODIFY DETAILS OF DEVELOPMENT CONSENT

See attached letter dated 21 August 2017 from Newcastle City Council to Windham Developments Pty. Ltd.
SCHEDULE 3 – LAND DEDICATION PLAN
Executed as an Agreement.

Executed on behalf of the
COUNCIL OF THE CITY OF NEWCASTLE

Chief Executive Officer

Signature of Witness

Full Name:
Position:

Executed by WINDHAM DEVELOPMENTS PTY. LIMITED
ACN 604 854 300 pursuant to Section 127 of the
Corporations Act 2001 by:-

Warwick Miller
Director

Duncan John Miller
Director
Section 1.02  Appendix 2 – Explanatory Note Template

Environmental Planning and Assessment Regulation 2000
(Clause 25E)

Explanatory Note
Draft Planning Agreement

Under Part 7 Clause 7.4 of the Environmental Planning and Assessment Act 1979

1. Parties

Council of the City of Newcastle (Planning Authority)
Windham Developments Pty. Limited ACN 604 854 360 (Developer)

2. Description of Subject Land

Lot 2 DP 81601 being that part of the said Lot shown in the Land Dedication Plan annexed at Schedule 3 to this Agreement.

3. Description of Proposed Change to Environmental Planning Instrument/Development Application:-

   1) Provision of Development Contribution payable by the Developer under DA2016/00346 by way of Works referred to in this Agreement.
   2) Satisfaction, wholly or in part, of public art Works requirement as set out in DA2016/00346 by way Works referred to in this Agreement.


   a) Provision of public open/recreation space for the Newcastle community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.
   b) Provides for dedication of the Land in favour of the Council of the City of Newcastle.
   c) Provides for maintenance by the Developer of the Land for a limited period of time.
   d) Provides for rectification by the Developer of any defective Works the subject of the Planning Agreement.
   e) Provides for dispute resolution whether by means of expert determination or mediation.
   f) Provides that the agreement is governed by the Laws of New South Wales.
   g) Provides that a New Tax System (Goods and Services Tax) (Act 1999) (Cth) applies to the Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement:
Provision of public open/recreation space for the Newcastle Community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.
How the Draft Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979:

Provision of public open/recreation space for the Newcastle Community to provide pedestrian/cycle link between King Street and Hunter Street Newcastle West.

How the Draft Planning Agreement Promotes the Public Interest:

For Planning Authorities:


b) Other Public Authorities - How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is constituted – Not applicable.

c) Councils – How the Draft planning Agreement Promotes the Elements of the Council’s Charter

1. Improvement of connectivity between King and Hunter Streets as envisaged in the Hunter Street Revitalisation Final Strategic Framework.

2. Provide an overflow path across Hunter Street the need for which has been identified in the Newcastle City Wide Flood Plane Risk Management Study and Plan (June 2012).

d) All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program

The Impact of the Draft Planning Agreement on the Public or Any Section of the Public

Other Matters

Signed and Dated by All Parties
ITEM-79  CCL 28/08/18 - EXHIBITION OF INDICATIVE LOT LAYOUT AND STAGING PLAN - BLACKHILL EMPLOYMENT LANDS

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM MANAGER REGULATORY AND ASSESSMENT

PURPOSE

This report seeks Council's endorsement for exhibition of a staging and lot layout plan at Lot 30, DP 870411, 198 John Renshaw Drive, Black Hill, known as Blackhill Employment Lands.

RECOMMENDATION

1 Council resolves to:

   i) Place draft staging and lot layout plan for Blackhill Employment Lands on public exhibition for a minimum period of 28 days.

   ii) Receive a report back following the exhibition and detailing any comments received prior to making a determination on the staging and lot layout plan.

KEY ISSUES

2 On 19 November 2013, the then Department of Planning and Infrastructure approved a Concept Plan pursuant to former section 75O and 75P of the Environmental Planning and Assessment Act 1979. The Concept Plan (10-0093) was for the development of 183 hectares of employment lands, dedication of 545 hectares of conservation lands to the NSW State Government, conceptual road, pedestrian and cycleway network, conceptual lot layout and associated infrastructure. The concept plan approval is known as "Blackhill Employment Lands" (Attachment A).

3 The Concept Plan includes a number of conditions that are required to be satisfied prior to the first application for subdivision.

4 Condition 1.8 required the proponent to revise the site specific Urban Design Guidelines to ensure consistency with the provisions in Council's Development Control Plan, to address issues relating to cut, fill and earthworks, visual buffer and to manage internal land use conflict between the proposed childcare and industrial land uses. The revised Guidelines were prepared in consultation with Council prior to approval by the Director General (now the Secretary) of the Department of Planning and Environment (DPE) in July 2018.
5 Condition 1.8 also required the Urban Design Guidelines to be in a format where they may be adopted within Council's DCP in the future. However, given the Urban Design Guidelines were approved by the DPE and Council would need to seek concurrence for any proposed amendment in the future, it is not proposed for these to be adopted into Council's DCP at this stage. A copy of the guidelines are attached for information only (Attachment B).

6 Further to the approval of the Urban Design Guidelines, Condition 1.10 of the Concept Approval, requires the proponent to prepare a staging and lot layout plan for Council's endorsement, prior to the first application for subdivision. The draft Staging Plan provides an indicative lot and road layout and proposed order of delivery of the development. While the indicative lot layout was not previously approved as part of the Concept Approval or the Urban Design Guidelines, if endorsed by Council this will form part of the Urban Design Guidelines for the site.

7 Condition 1.10 also requires the proponent and Council to determine the management arrangements for Viney Creek riparian corridor, location of storm water detention basins, recreation infrastructure, Asset Protection Zones and local and State infrastructure contributions. These are matters for consideration through the development assessment process and will be considered and finalised in the processing of the development application for subdivision of the site.

FINANCIAL IMPACT

8 Work will be undertaken by Council's Regulatory and Assessment staff within their current allocated work program and budget.

9 There is no provision within the adopted fees and charges for Council to recoup the cost of approving this plan by way of application fees. However, the staging plan will ensure Council's future financial interests are considered.

COMMUNITY STRATEGIC PLAN ALIGNMENT

10 The exhibition of the draft staging plan and lot layout aligns with the following Community Strategic Plan Directions:

**Liveable Built Environment**

5.4b Plan, provide and manage infrastructure that continues to meet community needs.

**Open and Collaborative Leadership**

7.1a Encourage and support long term planning for Newcastle, including implementation, resourcing, monitoring and reporting.

7.2a Conduct Council business in an open, transparent and accountable manner.
7.3a Provide opportunities for genuine engagement with the community to inform Council's decision-making.

IMPLEMENTATION PLAN/IMPLICATIONS

11 The staging and lot layout plan, if endorsed, will be used in the assessment of any future DA for subdivision.

12 The Urban Design Guidelines, which were approved by DPE as part of the concept plan approval, will also be used in the assessment of any future DA for subdivision.

RISK ASSESSMENT AND MITIGATION

13 No significant risks have been identified as part of the exhibition process.

RELATED PREVIOUS DECISIONS

14 Nil.

CONSULTATION

15 This report seeks a resolution of Council to publicly exhibit the staging and lot layout plan. It is proposed that the lot layout and staging plan be publicly exhibited for 28 days.

16 The exhibition will include, at a minimum, public notice in the local newspaper, publication on the Newcastle City Council web page and letters to owners of adjoining and nearby properties.

17 Consultation and negotiations with Roads and Maritime Service has been undertaken by the applicant as part of the concept planning approval and in the development of the Urban Design Guidelines. The staging and lot layout plan will also be referred to the Roads and Maritime Service for comment as part of this exhibition.

BACKGROUND

18 The concept plan approval for the Blackhill Employment Lands was approved by delegates of the Minister of Planning and Infrastructure on 19 November 2013.

19 Since 2013, negotiations have been occurring between the Department of Planning and Environment, the applicant and where appropriate Council to progress the detail of the concept plan approval and satisfy the conditions of consent.

20 A development application for the subdivision of the entire site has been lodged and is under assessment.
OPTIONS

Option 1

21 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

22 Council resolves not to proceed with the exhibition of the draft lot layout and staging plan. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Draft Staging and Lot Layout Plan
Attachment B: Urban Design Guidelines
6.16 – Black Hill Employment Lands

Relationship with Concept Approval MP 10_0093

Concept Approval MP 10_0093 for the development of the site was issued by the Minister for Planning and Infrastructure on 19 November 2013 under the provisions of Section 75O and 75P of the Environmental Planning and Assessment Act 1979.

Section 1.6 of the Concept Approval requires that future development of the Black Hill Employment Lands is to comply with the Urban Design Guidelines (UDGs) which generally reflect Newcastle Development Control Plan. The UDGs are to be presented in a form to be adopted as site specific controls within Council’s DCP. This DCP section provides revised ‘Urban Design Guidelines’ consistent with the Concept Approval and supporting documents, and as amended in accordance with the relevant conditions of approval.

The Concept Approval provides for the following:

- Staged development of a 183 hectares site for an employment lands development;
- Dedication of 545 hectares of conservation lands;
- Conceptual road, pedestrian and cycleway network;
- Conceptual lot layout;
- Indicative staging; and
- Associated infrastructure.

In the event of any inconsistency between this DCP section or any environmental planning instrument and the Concept Approval, the terms of the approval will prevail to the extent of the inconsistency.
### Amendment history

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<th>Version Number</th>
<th>Date Adopted by Director General NSW Planning &amp; Environment</th>
<th>Commencement Date</th>
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<td>Draft lodged with NCC 4 April 2017</td>
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<td>V2</td>
<td>Draft comments provided to Stevens Group 26 May 2017</td>
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<td>V3</td>
<td>Amended following consultation with Department of Planning &amp; Environment on 13 June 2018</td>
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<td>Amended following consultation with Department of Planning &amp; Environment on 21 June 2018</td>
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#### Date Adopted

**Land to which this section applies**

This section applies to all land within the heavy line marked on Map 1 – Black Hill Employment Lands

**Map 1: Black Hill Employment Land**
Development (type/s) to which this section applies

This section applies to all development within the Black Hill Employment Lands requiring development consent.

Applicable environmental planning instruments and legislation

The provisions of the following listed environmental planning instruments also apply to development applications to which this section applies:

- Newcastle Local Environmental Plan 2012

In the event of any inconsistency between this DCP section and the above listed environmental planning instrument, the environmental planning instrument will prevail to the extent of the inconsistency.

Related Sections

The following sections of this DCP will apply to development to which this section applies:

- 3.01 Subdivision
- 3.13 Industrial Development
- 7.02 Landscape open space and visual amenity
- 7.03 Traffic, Parking and Access
- 7.04 Movement Networks
- 7.06 Storm Water
- 7.07 Water Efficiency
- 7.09 Outdoor Advertising and Signage

The following sections of this DCP may apply to development to which this section applies, noting the above paragraphs with respect to any inconsistencies that may arise.

- Any applicable land use specific provision under Part 3.00;
- 4.01 Flood Management - all land which is identified as flood prone under the Newcastle Flood Policy or within a PMF or area likely to flood.
- 4.02 Bush Fire Protection - within a mapped bush fire area/zone.
- 4.03 Mine Subsidence - within mine subsidence area
- 4.04 Safety and Security - development with an accessibility to general public, access to laneways and/or communal areas.
- 4.06 Social Impact - where required for site specific developments under ‘Social Impact Assessment Policy for Development Applications’., 1999;
- 5.01 Soil Management
- 5.02 Land Contamination
- 5.03 Tree Management - within 5 m of a development footprint or those trees likely to be affected by the development
- 5.04 Aboriginal Heritage - known/likely Aboriginal heritage item/site and/or potential soil disturbance.
- 5.05 Heritage Items - known heritage item or in proximity to a heritage item
- 5.06 Archaeological Management - known/likely archaeological site or potential soil disturbance.
- 7.05 Energy Efficiency;
- 7.08 Waste Management;
- 8.00 Public Participation; and
- 9.00 Glossary
Additional information

- Concept Plan Application MP 10_0093

Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Part 9.00 - Glossary of this plan.

Aims of this section

1. To ensure that the Black Hill Employment land is developed generally in accordance with the Concept Approval (MP10_0093) for the site.

2. To provide for the development employment land to support a range of employment generating activities and associated support facilities and infrastructure.

3. To ensure the timely and efficient release of land that makes provision for the staging of necessary infrastructure whilst maximising employment land yields.

4. To provide for industrial buildings and development which is both functional to meet the user’s needs, as well as contributing to a good quality streetscape when viewed from public places.

5. To provide a flexible design layout and a simple and safe road network to cater for a range of future uses including large scale industrial development.

6. To ensure the ongoing management of Viney Creek riparian corridor is achieved by incorporating best practice environmental management and water sensitive urban design methods.

7. To provide employment lands directly accessible to major transportation corridors, incorporating public transport networks that link bus services with the rail system to promote public transport as an alternative and effective transport choice.

8. To create additional employment opportunities locally and regionally, in an established employment node.

9. To provide a visual buffer along the transport corridors to encourage a green entry.
6.16.01 Subdivision Design

A. Layout

Objectives

1. To provide for the subdivision of land in response to the opportunities and constraints of the site.
2. To provide a variety of lot sizes and configurations to enable a range of industrial and ancillary activities to be undertaken to accommodate a functional and desirable mix of development.
3. To provide a reasonable site area for buildings, manoeuvring, parking and landscaping.
4. To ensure adequate provision is made for green buffer zones between major road corridors and development.

Controls

1. Development applications for subdivision shall be generally in accordance with the Black Hill Concept Plan Approval (10_0093) and the indicative road and lot layout approved by Council in accordance with Condition 1.10 of the Concept Approval.
2. All industrial lots are to be a minimum of 1000m² in area, with a minimum frontage of 20m.
3. The staging plan shall provide for the schedule of delivery and dedication, where relevant, of the provision and management of infrastructure and servicing, including roads, stormwater, open space, and asset protection zones.
4. Vegetated Buffer zones are to be provided or retained as follows:
   - Northern boundary (John Renshaw Drive) – 20m
   - Eastern boundary (M1/F3 Freeway) – 20m, supplementing the Green Buffer Zone on the RMS land along the road corridor.
   - Southern boundary (private landowners) – 20m
5. A landscape plan is to be submitted to Council in accordance with Section 7.02 of the Newcastle DCP 2012.
B. Road Network

Objectives

1. To provide direct access and egress from both the M1 and John Renshaw Drive in accordance with the requirements of the RMS.
2. To ensure connectivity through the site by the establishment of a clear and easily identifiable road hierarchy and a network of open space, cyclist and pedestrian routes.
3. To design an effective road network consistent with Council’s Standard Drawing Register.
4. To minimise the number of road crossings of Viney Creek.
5. To ensure appropriate access and egress for bushfire protection and fire fighting.

Controls

1. The road network comprises a flexible layout which will provide the foundation for the future subdivision of the Black Hill Employment Lands and create good traffic circulation.
2. The roads are to be designed to cater for large articulated vehicles including B-Doubles.
3. Detailed design for the access locations to be determined in consultation with the RMS and shall include the staged construction of the works as required as a consequence of the development for each stage.
4. Ensure that vehicular and pedestrian circulation is clearly identified and separated.
5. A traffic and transport impact study shall be submitted with each precinct-based (stage) subdivision application, updating the traffic model based on current movements and having regard to any improvements to existing intersections and the road network that may have been undertaken and alternative access arrangements that may be required.
6. No direct property access to individual lots is permitted to or from John Renshaw Drive or the M1 Motorway.
7. Provision for access shall be provided to allow for the future extension of the road network into lands to the south and to the west.
8. The internal road network for each stage, including provisions for on-road cycleways, shall have regard to the overall hierarchy of the road network and the intended future use of the land.
9. On-road cycleways will be provided on industrial collector roads only. Shared off-road pathways are not required within the Black Hill Employment Lands.
10. All bridge structures must accommodate SM 1600 loading.
C. Public Transport and Cycleway Network

Objectives

1. To ensure connectivity through the site by the establishment of a safe and easily identifiable network of and cycleway routes.
2. To promote the integration of cycling infrastructure within the site and links to existing and proposed infrastructure in the wider region.
3. To facilitate the provision of public transport connections to and throughout the Black Hill Employment Lands.

Controls

1. Provide for a safe and convenient cycleway network along collector roads throughout the site.
2. Cycling infrastructure is to be designed and integrated with public transport facilities and the regional cycling network.
3. The road network is to be designed to provide for a clear and convenient bus route throughout the site, including the provision of bus shelters and seating as required.
4. Provide details with the subdivision application for each stage, demonstrating consultation with the relevant bus company and the demand to extend or provide an additional bus route throughout the development including the proposed location of bus stops to service the development.
5. A network plan is to be prepared to meet the requirements of condition 1.19 of the Concept Approval.

D. Earthworks and Clearing

Objectives

1. To enable the clearing of land to facilitate the development of the Black Hill Employment Lands.
2. To enable bulk earthworks to be undertaken on site and managed in a co-ordinated approach to minimise the necessity for future site specific earthworks.
3. To encourage the design of the subdivision having regard to the protection of the riparian corridor and retention of visual buffers along the site boundaries/road frontages.
4. To minimise and manage any impacts on mature and hollow bearing trees and fauna within the site during clearing.
Controls

1. Clearing for the purposes of providing access or service infrastructure within the riparian corridor and where required within the visual buffer areas is permitted.

2. Prepare a management strategy to provide for the staged clearing of land, addressing measures to minimise any impacts on fauna including appropriate tree clearing protocols for the removal of trees containing suitable habitat hollows, the treatment and relocation of displaced fauna, and the identification and protection of any trees to be retained outside of the subdivision footprint.

3. Provide details of erosion and sediment control measures that should be implemented to protect vegetation within the riparian corridor and within any buffer areas.

4. Provide a bulk earthworks plan identifying proposed cut and fill and finished final contours.

5. Provide details of the suitability of any externally sourced fill, if required.

E. Riparian Corridor

Objectives

1. To recognise the importance of Viney Creek as a significant watercourse.

2. To encourage the protection and rehabilitation of the Viney Creek riparian corridor.

3. Ensure the integrity of the riparian corridor is maintained and protected.

4. To ensure future development protects and enhances these environmental attributes.

5. To ensure that open spaces areas can be easily managed and maintained.

6. To preserve the character and habitat value of the corridor and maintain a vegetated setting.

Controls

1. The riparian corridor is reflected by the E2 Environmental Conservation zoning and includes the buffer zones endorsed by the Concept Approval.

2. Restrict pedestrian access to the core riparian corridor by limiting any pedestrian network to the road crossings, to protect and maintain the integrity and biodiversity value of the site.

3. Install appropriate nutrient and sediment control measures for each stage of subdivision outside of the riparian corridor to ensure on-going water quality and management of direct and potential indirect impacts to the site and downstream environs.

4. Retain riparian vegetation, as far as practicable, to provide a wildlife corridor and filter stormwater runoff.

5. Preparation of a rehabilitation plan for the Viney Creek riparian corridor in conjunction with the subdivision application, identifying management measures for the removal of any waste, revegetation, weed management and on-going monitoring and management of the corridor including costs.
6. Best practice water sensitive urban design measures will be utilised in accordance with Section 7.06 of Council's DCP.

7. Works within the riparian corridors, including the approved road and services crossing, are to be designed in accordance with the requirements of the NSW Office of Water.

**Note:** A 20m buffer zone to Viney Creek has been endorsed by the Concept Approval.
F. Cultural Heritage

Objectives

1. To identify and manage any potential impacts on Aboriginal cultural heritage.

Controls

1. An Aboriginal Cultural Heritage Management Plan (ACHMP) shall be prepared for the site in consultation with the Registered Aboriginal Parties and in accordance with OEH guidelines and the Preferred Project Report – Final Heritage Impact Statement (prepared by ERM, June 2011).

2. A copy of the ACHMP shall be submitted to Council prior to the commencement of works on site.

3. Development of the site shall be undertaken in accordance with the recommendations of the ACHMP prepared for the site.

4. The ACHMP shall be implemented prior to the commencement of any construction works on site for each stage.

G. Geotechnical / Contamination

Objectives

1. To identify and manage any potential impacts on future development as a result of mine subsidence, contamination or groundwater.

2. To ensure the safety of future users of the site.

3. Provide durable infrastructure to ensure it is not affected by mine subsidence.

Controls

1. A remediation action plan is to be prepared with each precinct-based (stage) subdivision application in accordance with the relevant guidelines and the Preliminary Geotechnical, Contamination and Mine Subsidence Assessment prepared by Douglas Partners, February 2011, should the likelihood of contamination be identified, including details of the staging of remediation works where necessary.

2. Any remediation of the site is to be staged in line with the future development and undertaken prior to use for its intended industrial purpose.

3. A site validation plan is to be submitted to Council prior to issue of a subdivision certificate for that part of the site identified as requiring remediation.

4. Identification of any potential risks and proposed management measures associated with mine subsidence within the site, where relevant for each stage of subdivision.

5. Any bulk earthworks plan is to identify the depth of excavation works proposed and address the likelihood of the interception of groundwater.

6. If groundwater is likely to be encountered during works, an appropriate dewatering permit is to be obtained from the NSW Office of Water prior to that activity commencing.
7. The potential management of any water seepage likely to occur from mine workings within the site is to be addressed, if identified.

8. The potential management of any water seepage likely to occur from mine workings within the site is to be addressed, if identified.

H. Noise Mitigation

Objectives

1. To manage and mitigate any potential noise impacts during construction and operation of industrial developments.

2. To minimise any potential land use conflicts within the site.

3. To minimise external noise between unlike land uses.

Controls

1. Prepare a Noise Management Plan for the site in conjunction with the subdivision of the land.

2. All works should be undertaken generally in accordance with the Noise Management Plan prepared for the site.

3. Noise attenuation for buildings are to be addressed primarily through the placement of uses and then the design of the built form.

I. Infrastructure and Utilities

Objectives

1. To ensure the adequate provision of infrastructure and utilities to service the development.

2. To ensure legal access is available to infrastructure for maintenance purposes.

Controls

1. Provide for the provision of utility infrastructure to service the development including, but not limited to, electricity, water, sewer, and communication services (NBN Policy).

2. Details of consultation with relevant service providers shall be submitted for each precinct-based (stage) subdivision application, demonstrating satisfactory arrangements can be made available for the provision of services and infrastructure.

3. Crossings of riparian corridors for utility infrastructure are to be co-located with road crossings.

4. New services within the precinct are to be provided underground.

5. Provide for the creation of suitable easements for utility services that encroach onto private land.
J. Water Management

Objectives
1. To ensure stormwater is managed on site to minimise the potential impacts of development and to protect the quality of receiving waters;
2. To apply the principles of water sensitive urban design;
3. To ensure stormwater infrastructure is identified on site and can be appropriately managed and maintained.
4. To ensure stormwater infrastructure to be dedicated to Council is completed in accordance with DCP Section 7.06 and associated Technical Manual.

Controls
1. All stormwater management devices are to be designed in accordance with the NSW Office of Water (NOW) guidelines for Controlled Activities, and any relevant Council policies.
2. The subdivision and development of the site is to be designed in accordance Section 7.06 of DCP.
3. Details of the maintenance and management arrangements for public stormwater facilities, where relevant, are to be provided to Council for approval.
4. Pipe network is to be inspected (via CCTV) prior to handover of infrastructure to Council in accordance with DCP Section 7.06 and associated Technical Manual.
5. Preparation of a revised flood assessment of the site with consideration to the impacts of mine subsidence on the site, detailing the following:
   a) Changes to the flood behaviour as a result of the proposal;
   b) Rise times and flash floods;
   c) Revised flood planning levels; and
   d) Procedures for evacuation in the event of a flash flood.
6. Each Development Application is to demonstrate that buildings would be located above the flood planning levels for the site.

Note: A revised flood assessment is required to reflect updated data as at the time of detailed subdivision design.

K. Construction Management

Objectives
1. To ensure that the construction of the land is adequately managed to minimise any potential impacts on the built or natural environment, or the amenity of the locality.

Controls
1. A Construction Management Plan is to be prepared and submitted to Council in conjunction with each stage of the development of the site.
6.16.02 Site and Building Elements

A. Site Coverage and Design

Objectives
1. To ensure that sites are developed to a level that maintains their efficient operation.
2. To ensure development responds positively to the particular environmental attributes and constraints affecting the site, including:
   - Geotechnical constraints (subsidence)
   - Flooding and riparian zones
3. To ensure the safety of future users of the site.

Controls
1. Proposals are to clearly define spaces for pedestrians, utilities, service, parking and storage areas;
2. Buildings are to be orientated towards the primary street frontage within the site;
3. Buildings are to provide outdoor seating where possible;
4. Proposals locate the majority of service areas, refuse and mechanical services behind buildings and/or screened from key streets and public open space;
5. Future development is to comply with the requirements of the Bushfire Management Plan and the Planning for Bushfire Protection 2008 Guidelines (as amended).
6. Future buildings are not to encroach within the designated APZ areas.
7. Visual buffers and Asset Protection Zones (APZs) required for bushfire protection purposes are to be located and maintained within each individual site.

B. Setbacks

Objectives
1. To ensure that adequate area is available at the front of buildings to accommodate satisfactory landscaping, access and manoeuvring of vehicles.
2. To reduce the visual impact of industrial development on the streetscape and surrounding development.

Controls
1. Development is to be setback 5m from the front property boundary, however, this setback may be reduced by up to 50% for half the width of the site provided that:
   (a) the remaining portion of the development is setback a distance equivalent to the concession taken;
   (b) the building design contributes to the enhancement of the streetscape;
   (c) the setback area is landscaped;
   (d) the front setback does not have any car parking spaces.
2. For corner lots, a secondary setback of 2m – 5m should be provided.
3. Buildings, external work and storage areas are to be setback a minimum of 6m from side and rear boundaries on sites of 10,000m² or more.

C. Car Parking, Access and Loading

Objectives

1. To locate and design any car parking, driveways and servicing areas so that they are efficient, safe, convenient and easily identified.

2. To ensure adequate areas are set aside on site to allow for the safe and efficient manoeuvring of delivery and service vehicles.

3. To ensure car parking areas are of suitable dimensions/layout to allow for vehicle manoeuvring.

4. To provide sufficient off-street car parking facilities that do not detract from the overall visual amenity and character of developments when viewed from the street.

Controls

1. Provide an appropriate level of landscaping to minimise the visual impact of loading and car parking areas from the street. For sites with less than 20 spaces, visual planting to the perimeter of the car park shall be sufficient. For sites with more than 20 spaces, tree bays should be incorporated at one bay for every 20 spaces where practicable, except where bays abut rear or side walls of buildings.

2. Driveways are to be designed to enable vehicles to enter and leave the site in a forward direction.

3. Loading docks are to be located such that they minimise conflicts between other vehicles accessing the site.

4. Parking is to be provided in accordance with DCP Section 7.03.

5. Parking requirements for other uses are to be determined by reference to the Newcastle City Council or RMS car parking requirements.

6. Car parking is not permitted within the front setback.

7. Provision of appropriate end of trip facilities for developments such as motor bike and bicycle parking.
D. Design and Appearance of Development

Objectives

1. To promote industrial development that is both functional and attractive in the context of its local environment through appropriate design.
2. The building facade design should enhance the pedestrian comfort of the streetscape.
3. To encourage sustainable design in the future development of the industrial precinct.

Controls

1. Elevations of buildings which are visible from a public area are to be constructed using glass, brick, masonry, pre-coloured metal cladding, ‘tilt-slab’ concrete or a combination of these materials.
2. Ancillary offices, staff amenities and other low-scale building elements are to be, wherever practicable, located at the front of the premises and constructed in brick or masonry materials to enhance the appearance of the development.
3. Roofing materials are to consist of low-reflective materials.
4. Building facade treatment reflects the activities carried out within the building.
5. Open work and storage areas are to be located at the rear of industrial developments and screened from view by the use of landscaping and screen fencing.
6. Security fencing should be visually unobtrusive and, except in special circumstances, should be located behind the landscape setback area.

E. Waste Management

Objectives

1. To promote efficient waste management.
2. To minimise waste transfer.

Controls

1. Future developments should optimise on-site recycling and reduce waste production.
2. Individual waste storage and collection areas are required for developments, which are appropriately screened and accessible.
3. A waste management plan is to be prepared for each development application in accordance with Council’s requirements.

F. Landscaping

Objectives

1. To enhance the visual amenity of Black Hill Employment Lands.
2. To encourage a high standard of landscaping to enhance the streetscape and amenity of Black Hill Employment Lands.
3. To minimise landscape maintenance requirements.

**Controls**

1. Areas required to be landscaped:
   - The front building setback;
   - Secondary setbacks where visible from a public place;
   - Areas adjacent to building entrances and pedestrian access points;
   - The perimeter of all approved open storage areas and staff/visitor parking areas.
     Large car parking areas should be interspersed with internal planting bays to reduce the visual impact of large areas of paved surfaces;

2. An unobstructed root area 1m deep and 20 – 40m² is to be provided around each tree (no building or pavements permitted in this area).

3. Passive watering techniques are to be utilised as part of the road drainage system.

4. A landscape plan is to be prepared for all future development applications, which includes details of both hard and soft landscaping.

**G. Stormwater Management**

**Objectives**

1. To ensure integrated water cycle management best practices are utilised throughout the Estate.

2. To protect the natural environment from the effects of stormwater run-off.

3. To manage stormwater on an individual lot basis.

4. To maximise use of recycled water within the Estate.

5. Future buildings should demonstrate a commitment to Ecologically Sustainable Development (ESD) principles, with particular regard to water re-use and management.

**Controls**

1. Development of the site is designed in accordance with Section 7.06 of the DCP.

2. A Stormwater Management Plan is to be prepared for the development of each individual allotment.

3. Each lot should provide water quality treatment.

4. On site detention may be provided in the form of landscaped swale/depression, subterranean detention tanks or above ground water tanks (with surrounding landscaping to minimise visual impact).

5. All water leaving a site to be treated for the removal of sediments, heavy metals and other contaminants.

6. Best practice water sensitive urban design measures will be utilised in accordance with Section 7.06 of Council's DCP.
ITEM-80  CCL 28/08/18 - PUBLIC EXHIBITION OF THE DRAFT CITY MARKETING AND ENGAGEMENT STRATEGY

REPORT BY: STRATEGY AND ENGAGEMENT
CONTACT: INTERIM DIRECTOR STRATEGY AND ENGAGEMENT / MANAGER MAJOR EVENTS AND CORPORATE AFFAIRS

PURPOSE

To place the draft 2018-2021 City Marketing and Engagement Strategy on public exhibition for a period of 28 days.

RECOMMENDATION

1 Council resolves to endorse a draft 2018-2021 City Marketing and Engagement Strategy as at Attachment A for public exhibition for a period of 28 days.

KEY ISSUES

2 The purpose of the draft City Marketing and Engagement Strategy (Strategy) is to set the objectives, priorities and actions to achieve our corporate goals relating to our Council communications, marketing and community engagement.

3 The Strategy aims to:

   (i) Build trust with our community;
   (ii) Support our commitment to open and collaborative leadership;
   (iii) Direct our investment in our communications, marketing and engagement and associated technologies;
   (iv) Actively seek input into our decision making; and
   (v) Be open, transparent, accessible and inclusive with our communications.

4 This Strategy will replace the 2012 Community Engagement Charter and 2013 Community Engagement Framework and Policy.

FINANCIAL IMPACT

5 There is no cost to endorse the draft Strategy. If adopted, the Strategy actions and initiatives will be implemented within operational budgets.

COMMUNITY STRATEGIC PLAN ALIGNMENT

6 This Strategy aligns with the Newcastle 2030 Community Strategic Plan’s priority of Leadership, Open and Transparent Governance, Engaged Citizens, Inclusion, Diversity and Community Spirit.
IMPLEMENTATION PLAN/IMPLICATIONS

7 Should Council resolve to endorse the Strategy, the Major Events and Corporate Affairs Team will implement all actions within the Strategy over the next four years.

RISK ASSESSMENT AND MITIGATION

8 There is no identified risk in placing the Strategy on public exhibition.

RELATED PREVIOUS DECISIONS

9 At the Ordinary Council Meeting held on 21 February 2012, Council resolved to adopt the City Engagement Charter.

10 At the Ordinary Council Meeting held on 26 November 2013, Council resolved to adopt the Community Engagement Policy and Community Engagement Framework.

CONSULTATION

11 Extensive research and consultation has taken place with the community through our Newcastle 2030 engagement program, Community Survey, brand recognition surveys, internal stakeholders and the digital analytics results which have informed the Strategy.

12 A Councillor Workshop was held on 14 August 2018.

BACKGROUND

13 The Newcastle 2030 engagement program with 2,700 residents indicated that community engagement is seen as a vital function and an integral part of Council demonstrating open and transparent governance. The community expect to be informed, and that their input be considered in Council decision making.

14 The community survey from 2014 and 2016, which has been completed by more than 1,000 residents, identified involvement in decision making and information about Council activities as high priority areas.
OPTIONS

Option 1

15 The recommendation as at paragraph 1. This is the recommended option.

Option 2

16 Council does not proceed with endorsing the 2018-2021 City Marketing and Engagement Strategy for public exhibition. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Draft 2018-2021 City Marketing and Engagement Strategy Distributed under separate cover
ITEM-81  CCL 28/08/18 - ORGANISATION NAMING CONVENTION

REPORT BY:  STRATEGY AND ENGAGEMENT
CONTACT:  INTERIM DIRECTOR STRATEGY AND ENGAGEMENT / MANAGER MAJOR EVENTS AND CORPORATE AFFAIRS

PURPOSE

To implement a consistent naming convention for the organisation for all branding and trading purposes.

RECOMMENDATION

1 Council endorses the title of the organisation as 'City of Newcastle' for branding and trading purposes from 1 September 2018.

KEY ISSUES

2 The intent of this report is only to change the public-facing brand and trading name of the organisation. The legal entity of the organisation (ie Newcastle City Council) and its ABN/ACN numbers will remain unchanged.

3 Council has previously used the branding and trading name The City of Newcastle (TCoN), with this name remaining active and used consistently by staff and stakeholders. This report seeks the removal of 'The' from the title for branding and trading purposes.

4 The title 'City of Newcastle' as opposed to Newcastle City Council better reflects the organisation’s values and vision as well as Newcastle’s transition to a global city.

5 The name 'The City of Newcastle' is featured in Council's logo which has been in place since 1993. Therefore, this convention will make all references to Council consistent with its logo.

6 Establishing and communicating a consistent name and brand for Council is in line with the practices of many other councils throughout Australia.

FINANCIAL IMPACT

7 Approximate costs for implementing the change across Council documentation and digital channels will be undertaken within existing budgets. This excludes updating any existing works equipment that features the acronym NCC, which will be updated as new equipment is required.
COMMUNITY STRATEGIC PLAN ALIGNMENT

8 This Strategy aligns with the Newcastle 2030 Community Strategic Plan's priority of Leadership, Engaged Citizens, Inclusion, Diversity and Community Spirit.

IMPLEMENTATION PLAN/IMPLICATIONS

9 This change will not affect Council's statutory obligations and remains compliant.

10 Should Council resolve to endorse to change the title of the organisation, Council staff will register the business name City of Newcastle, implement a communications plan and all actions to update the name change.

RISK ASSESSMENT AND MITIGATION

11 There are no identified risks to Council in implementing a naming convention.

RELATED PREVIOUS DECISIONS

12 Nil.

CONSULTATION

13 Key internal stakeholders have been consulted on the name change.

14 A Councillor Workshop was held on 14 August 2018.

BACKGROUND

15 Council's legal name would remain as The Council of the City of Newcastle or Newcastle City Council as section 221(2) of the Local Government Act (1993) states:

   What is a council’s name?

(2) The name of a council of a city is the “Council of the City of X” or the “X City Council”, X being the name of the city.

16 Using ‘City of Newcastle’ as the public-facing brand and trading name without ‘The’ is consistent with other councils including: City of Adelaide, City of Melbourne, City of Sydney, City of Gold Coast and City of Greater Geelong.

17 Currently, the organisation is referred to in at least two ways:

   (i) The City of Newcastle as written on its logo;
   (ii) Newcastle City Council in text following a direction from the Executive Management Team (EMT) in 2015.
18 On 6 May 2015, Council's EMT resolved for the organisation to be referred to in all instances as 'Newcastle City Council':

(i) Confirming the title for the organisation as 'Newcastle City Council' and is communicated to staff and to update templates and collateral as required.
(ii) Cease use of the term 'The City of Newcastle' in reference to the organisation.
(iii) Use of the term 'The City of Newcastle' only if it talks about the Local Government Area (LGA) (not the organisation).
(iv) Continuing to use the existing logos currently in use by the organisation for both branding and marketing purposes and to revisit their continued use at a later stage.

19 The EMT resolution outlined in paragraph 18 did not include changing the wording in our corporate logo. This has caused confusion over an extended period of time.

20 There is an ongoing issue of the organisation being referred to as various names including:

(i) Newcastle City Council;
(ii) The City of Newcastle;
(iii) City of Newcastle;
(iv) the Council of the City of Newcastle; and
(v) the City of Newcastle Council.

21 In the past 100 years, the organisation has been referred to as Newcastle Municipal Council, Newcastle City Council and City of Greater Newcastle Council.

22 In 2016, a Lord Mayoral Minute - Novocastrian Pride, a resolution to rename the Council LGA 'City of Hunter Coast' was rejected. Council instead resolved to seek legal advice on options available to retaining the name Newcastle in the title, and using The City of Newcastle or the City of Greater Newcastle should an amalgamation occur.

OPTIONS

Option 1

23 The recommendations as at Paragraph 1. This is the recommended option.

Option 2

24 Council does not proceed with endorsing the consistent naming convention and continues to use Newcastle City Council. This is not the recommended option.
REFERENCES

ATTACHMENTS

Nil.
ITEM-82 CCL 28/08/18 - TEMPORARY SUSPENSION OF ALCOHOL FREE ZONES FOR UPCOMING EVENTS

REPORT BY: STRATEGY AND ENGAGEMENT
CONTACT: INTERIM DIRECTOR STRATEGY AND ENGAGEMENT / MANAGER MAJOR EVENTS AND CORPORATE AFFAIRS

PURPOSE

To seek Council's approval to temporarily suspend the associated Alcohol Free Zones (AFZ) for the following events:

i) Newcastle China Week Festival for Beaumont, Cleary, James, Lindsay and Denison Streets, Hamilton on Sunday 23 September 2018 from 6am to 7pm.

ii) 'Olsen Ormandy: a creative force' exhibition opening event at Newcastle Art Gallery for Laman Street between Darby and Dawson Streets, Cooks Hill on Friday 16 November 2018 from 5pm to 11pm.

iii) Newcastle Diggers Club Promotional Weekend for Keightley Lane, Newcastle on Friday 23, Saturday 24 and Sunday 25 November 2018 from 10am to 6pm.

iv) New Year's Eve 2018 for the car park adjacent to the eastern side of Queens Wharf, Wharf Road Newcastle on Monday 31 December 2018 from 6am to 1am on Tuesday 1 January 2019.

RECOMMENDATION

1. i) Council approves the temporary suspension of the AFZ for Beaumont, Cleary, James, Lindsay and Denison Streets, Hamilton on Sunday 23 September 2018 from 6am to 7pm for the purpose of Newcastle China Week Festival. This suspension is subject to the event organiser, the University of Newcastle, meeting all requirements of the NSW Police - Newcastle Local Area Command (NSW Police) and Council.

ii) Council approves the temporary Suspension of the AFZ for Laman Street between Darby and Dawson Streets, Cooks Hill on Friday 16 November 2018 from 5pm to 11pm for the purpose of 'Olsen Ormandy: a creative force' exhibition opening night. This suspension is subject to the event organiser, Newcastle Art Gallery, meeting all requirements of the NSW Police - Newcastle Local Area Command (NSW Police) and Council.

iii) Council approves the temporary suspension of the AFZ for Keightley Lane, Newcastle from 10am to 6pm on Friday 23 November, Saturday 24 November and Sunday 25 November 2018 for the purpose of allowing a promotional weekend. This suspension is subject to the event organiser, Newcastle Diggers Club, meeting all requirements of the NSW Police - Newcastle Local Area Command (NSW Police) and Council.
iv) Council approves the temporary suspension of the AFZ for the car park adjacent to the eastern side of Queens Wharf, Wharf Road, Newcastle from 6am Monday 31 December 2018 to 1am Monday 1 January 2019 for the purpose of staging Newcastle City Council's New Year Eve event. This suspension is subject to Council's Events Management Team, meeting all requirements of the NSW Police - Newcastle Local Area Command (NSW Police) and Council.

KEY ISSUES

2 Any lifting of an AFZ must be under the direction of the NSW Police. In this instance the proposal for Newcastle China Week Festival, Olsen Ormandy exhibition opening and New Year's Eve 2018 celebrations have been considered by NSW Police and Council officers. The NSW Police support the lifting of the AFZs subject to the event organisers meeting the conditions placed on the event by Council.

3 Street signs must be covered immediately on commencement of the timeframe and the covers removed immediately following the suspended time. This will be the responsibility of the event organiser. Liaison with the NSW Police both before and after the Council resolution is an essential requirement. This consultation with the NSW Police has been undertaken by Council officers and will continue in the lead up to the respective events.

4 The NSW Police are satisfied with the management strategies that have been put in place by the event organisers, and support the suspension of the AFZs in regard to the events listed in Paragraph 1 (i) - (iv).

FINANCIAL IMPACT

5 Any costs associated with the suspension of AFZs are at full cost recovery from the event organisers.

COMMUNITY STRATEGIC PLAN ALIGNMENT

6 The temporary suspension of the AFZs on these occasions aligns with the following Community Strategic Plan directions:

Vibrant, Safe and Active Public Places

3.1c Support and deliver cultural and community programs, events and live music

IMPLEMENTATION PLAN/IMPLICATIONS

7 The responsibility of implementing the suspension of the AFZs lies with the event organiser. Assistance will be provided by Council officers including notification of the suspension and overseeing covering and uncovering the AFZ signs before and after the event.
RISK ASSESSMENT AND MITIGATION

8 Council officers and the NSW Police will work closely with the event organisers to ensure harm minimisation and risk mitigation strategies are in place to manage the serving and consumption of alcohol at events. The Event Authorisation issued by Council to the event organiser for the use of the related road / park reserve sets out relevant conditions and consents for each event.

RELATED PREVIOUS DECISIONS

9 Council has approved the temporary suspension of the AFZ in the past for these events and/or similar events.

CONSULTATION

10 Formal consultation is not deemed necessary due to the nature of the planned events. No negative feedback has been received as a result of the temporary suspension of the AFZs for these events when held previously.

BACKGROUND

11 A Council report adopted on 24 November 2015, re-established AFZs in locations across the city and required approval from Council to lift any AFZs when an approved festival or function is held.

12 Section 645 of the Local Government Act 1993 (Act) provides for Council, by resolution, to allow the temporary suspension of AFZs. The Act and Ministerial Guidelines on Alcohol Free Zones (February 2009) provides a procedure which must be followed in relation to suspending AFZs, and this includes a requirement to seek Council’s endorsement.

13 The Newcastle China Week Festival has been held in Beaumont Street, Hamilton since 2014. Prior to the Sunday event a night market is held in Gregson Park as part of China Week celebrations.

14 To launch the exhibition 'Olsen Ormandy: a creative force', Newcastle Art Gallery will host a community street party event celebrating the launch of this year's summer exhibition with live music and food vendors.

15 Newcastle Diggers Club successfully manages ANZAC Day activities annually.

16 Last year's family-friendly New Year's Eve event located around the Queens Wharf Precinct was highly successful and planning is underway for 2018 to include a concert, entertainment, food stalls and children's activities.
OPTIONS

Option 1

17 The recommendation as at Paragraph 1 (i) - (iv). This is the recommended option.

Option 2

18 Council resolves not to support the suspension the AFZs on these occasions. This is not the recommended option.

REFERENCES

ATTACHMENTS

Nil
ITEM-83 CCL 28/08/18 - COMPASSIONATE CITIES CHARTER

REPORT BY: STRATEGY AND ENGAGEMENT
CONTACT: INTERIM DIRECTOR STRATEGY AND ENGAGEMENT / MANAGER CORPORATE AND COMMUNITY PLANNING

PURPOSE

The purpose of this report is to advise Council regarding the benefits of ratifying the Compassionate Cities Charter and joining the Newcastle Compassionate Communities Collaboration (NCCC).

RECOMMENDATION

1 Council notes the Compassionate Communities Charter and recommends that Council officers work with the Newcastle Compassionate Communities Collaboration as a participatory member to further refine the Compassionate Communities Charter to address Australian and NSW local government scope and responsibilities.

KEY ISSUES

2 Attachment A provides an overview on Council's potential role on each of the Compassionate Communities Charter actions. The majority of the Compassionate Cities Charter targets actions that are outside of Council's direct control and Council would have only an advocacy role.

3 A small number of target actions within the Compassionate Cities Charter are already being delivered by Council on an ongoing basis (refer Attachment A), particularly regarding workplace policies, industrial relations and within the context of the cultural life of the city across a range of public and private creative exhibition spaces.

4 There is a significant leadership, advocacy and capacity building role for the NCCC in addressing the majority of the target actions. This is due to the differences between the scope and responsibilities of local government in the United Kingdom (UK) and Australia. The difference has been acknowledged by NCCC and raises the question in regard to the suitability and applicability of the UK Compassionate Cities Charter in the Australian environment.

5 The Groundswell Project (www.thegroundswellproject.com), has launched a national project to support the development and practice of compassionate communities in Australia and offers support to emerging local compassionate communities collaborations through mentoring tools and advice.

6 NCCC has identified that the key Compassionate Cities contribution opportunity for Council is through enabling community connectivity and supporting a community development approach through mechanisms such as:
i) The Newcastle Interagency Network e-newsletter (established to support community sector development and networking - www.newcastle.nsw.gov.au/Community/Community-Services/Newcastle-Interagency-Network);

ii) Public acknowledgement of the Compassionate Communities approach, including media support;

iii) Participation in and contribution to the NCCC; and

iv) Distribution of information on the range of community groups, events and networks.

7 A potential support organisation for a number of actions would be the Hunter New England and Central Coast Primary Health Network (PHN). The Hunter PHN is a not for profit organisation funded by the Commonwealth Government to improve the efficiency and effectiveness of the primary health care system. The purpose of the Hunter PHN is to deliver innovative, locally relevant solutions that measurably improve the health outcomes of our communities and they seek to do this through formal partnerships and funding agreements.

8 A range of existing community and non-government based organisations already raise awareness (eg events, marches) and undertake fund raising activities around various ageing, dying, death, loss and care related themes (Action 7 - Attachment A) throughout the year.

9 Attachment A provides the basis for ongoing discussions with NCCC to determine appropriate local initiatives and partners, as the proposed community development approach and required further work is substantial and long term.

FINANCIAL IMPACT

10 At the time of writing the financial implications of the Compassionate Cities Charter are not identified and understood. Any financial support for initiatives such as the proposed hosting of an annual memorial parade (Action 7 - Attachment A) are not identified in the current budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

11 The following Newcastle 2030 strategic directions are aligned with the Compassionate Cities model of Inclusive Community and the community objectives:

i) 4.1 A welcoming community that cares and looks after each other; and

ii) 4.2 Active and healthy communities with physical, mental and spiritual wellbeing.

IMPLEMENTATION PLAN/IMPLICATIONS

12 The resources required to support the Compassionate Cities approach are not identified or resourced in Council's 2018/19 Our Budget. Further exploration of the expectations of NCCC are required.
RISK ASSESSMENT AND MITIGATION

13 The Compassionate Cities Charter makes specific target and goal commitments to areas outside of Council's direct influence or control, such as schools, trade unions, churches, nursing homes and prisons. Council would have an advocacy role only to these areas.

RELATED PREVIOUS DECISIONS

14 Council resolution NOM 24/07/18 Compassionate Communities.

- Notes that the City of Newcastle has been nominated by the Groundswell Project to be one of eight ‘groundbreakers’ regarding the establishment of ‘Compassionate Communities’ across Australia;

- Recognises the establishment of the Newcastle Compassionate Communities Collaboration, a cross-sector collaborative aimed at supporting all sectors of our community to reduce the negative social, psychological and medical impact of serious illness, caregiving and bereavement; and

- Reviews the Compassionate Cities Charter and provides a report to Councillors at the August Ordinary Council Meeting regarding the benefits of the City of Newcastle ratifying the Charter and joining the Newcastle Compassionate Communities Collaboration.

CONSULTATION

15 Council Officers (Community Planning Coordinator and Senior Community Planner) met with representatives of the NCCC to gain a better understanding of the Compassionate Communities model and NCCC aims and objectives.

BACKGROUND

16 The key premise of the UK based Compassionate Cities model is the need for and the value of community connections and networks for people to support them during life’s most testing moments and experiences, such as dying, death, loss and care. The focus of the Compassionate Cities approach is the development of resilient networks of support for patients and carers and the enhancement of social capital and social cohesion within a community development approach.

17 The role of local government in the UK (in the absence of State Governments) covers a wider range of functions than local government functions in Australia. The UK functions broadly include strategic and local planning, transport, social services, education, fire and police services, public housing and waste services.
18 In NSW, the Local Government Act (1993), Chapter 8 guides councils with principles to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous within social justice principles (access, participation, equity and rights). A range of functions that UK local government delivers are implemented by State Governments in Australia.

OPTIONS

Option 1

19 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

20 Council ratifies the UK based Compassionate Cities Charter which is based on the UK local government model and which includes targets and goals outside of Council's control. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Compassionate Cities Charter - Identified Social Changes/Actions
<table>
<thead>
<tr>
<th>Compassionate Cities Charter - Actions</th>
<th>Comment</th>
<th>Council's potential actions and role</th>
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<tbody>
<tr>
<td>1. Our schools will have annually reviewed policies or guidance documents for dying, death, loss and care</td>
<td>NSW Department of Education has responsibility for the majority of schools within the Newcastle LGA. Other key stakeholders include Catholic Schools and various independents.</td>
<td>Advocate to the NSW Department of Education Leader - Lord Mayors office.</td>
</tr>
</tbody>
</table>
| 2. Our workplaces will have annually reviewed policies or guidance documents for dying, death, loss and care | Council has a range of existing policy responses which include:  
- the ongoing provision of an Employee Assistance Program (EAP)  
- In development, an organisationally focused Community Impact Program which includes establishment of a bereavement fund (financial contribution) and a personal leave fund  
- Procedural protocols for the death of an employee | Council will continue to review and maintain a compassionate policy approach for its employees.  
Leader - Director, People and Culture. |
| 3. Our trade unions will have annually reviewed policies or guidance documents for dying, death, loss and care | Trade unions have long advocated for leave entitlements in response to dying, death, loss and care.  
Leave provisions up to sick, bereavement and carers responsibilities are already included in Council's Enterprise Agreement 2009 and the Local Government (State) Award 2007. | Advocate for ongoing support for trade union advocacy for leave entitlements in response to dying, death, loss and care.  
Leader - Lord Mayors office. |
| 4. Our churches and temples will have at least one dedicated group for end of life care support | Council can advocate to various faith-based organisations; however, has no control over whether a faith based organisation has the capacity to support a dedicated group for end of life care support. | Leadership, advocacy and capacity building role for the Newcastle Compassionate Communities Collaboration of which Council will be a participatory member  
Collaborator - Corporate and Community Planning Unit. |

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| 5. Our city's hospices and nursing homes will have a community development program involving local area citizens in end of life care activities and programs | The Hunter Hospice does currently have a volunteer program which includes bereavement support and visiting patients.  
Nursing homes are run by various for profit and NGO providers, most of whom would have an Activities officer. | Leadership, advocacy and capacity building role for the Newcastle Compassionate Communities Collaboration of which Council will be a participatory member  
Collaborator - Corporate and Community Planning Unit. |
| 6. Our city's major museums and art galleries will hold annual exhibitions on the experiences of ageing, dying, death, loss or care | Newcastle has a range of public and private creative exhibition spaces.  
Artists often include the themes of ageing, dying, death, loss or care in their works as they are highly emotive and personal life events.  
A current example is an upcoming exhibition at Gallery 198 Gordon Street which explores the healing relationship between nature and bereavement where the artist’s work "... helps me feel more accepting of death as part of life’s process" [see https://www.gallery198.com.au/2018-exhibition].  
Newcastle Museum, Newcastle Art Gallery and Newcastle Library are committed to collecting and displaying moveable cultural heritage, art and archives which explore the significance of grief, death and mourning as part of their social and cultural responsibility to this city and its community.  
The Newcastle Museum and Art Gallery programming is 2-3 years in advance with an installation or program usually up for about 3 months at a time. | Continue to advocate for and facilitate culture as an integral part of Newcastle raised for its contribution to people’s lifelong learning and wellbeing, as well as being the city’s identity and economy. (Cultural Strategy Vision p17).  
Leader/ Provider - Director City Wide Services. |
### ATTACHMENT A - CCL 289/B/18 - COMPASSIONATE COMMUNITIES CHARTER

#### COMPASSIONATE CITIES CHARTER - ACTIONS

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<tr>
<td>7. Our city will host an annual pencestone memorial parade representing the major sectors of human loss outside military campaigns – cancer, motor neuron disease, AIDS, child loss, suicide survivors, animal companion loss, widowhood, industrial and vehicle accidents, the loss of emergency workers and all end of life care personnel, etc.</td>
<td>There are a significant number of existing community-based events throughout the year, some of which are licenced by Council, that raise awareness (and often include fundraising activities) around various ageing, dying, death, loss or care-related themes. These include events and themes such as Variety Bash, Motor Neurone Disease, Leukaemia, Tube for Boots (cuff competition breast cancer) Mother’s Day Classic (breast cancer), melanoma, Rhapsody in Red Charity Ball (SIDS) and Glow Walk for HRM. Indicative minimum costs for Council to host an annual parade are listed below:  - Motor vehicle response - $10k  - Traffic control - $5-$7k  - Staging - $5k  - PA - $2.5k  - Waste - $1.5k  - Media - $2.5k  - Staff time on day - $2.5k  - Total minimum - $22k</td>
<td>Council will continue to facilitate, liaison with, licence and promote community-led events that raise awareness of ageing, dying, death, loss or care-related themes. Provider - Major Events and Corporate Affairs Unit (Events Licensing)</td>
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<td></td>
<td>Events have advised that it would be most unlikely that community-based event organisers would hold only one event.</td>
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#### ATTACHMENT A - CCL 289/B/18 - COMPASSIONATE COMMUNITIES CHARTER

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<td>8. Our city will create an incentives scheme to celebrate and highlight the most creative compassionate organisation, event, and individual/s. The scheme will take the form of an annual award administered by a committee drawn from the end of life care sector. A ‘Moyes Prior’ will recognize individual/s for that year who most exemplify the city’s values of compassionate care.</td>
<td>This could be an excellent sponsorship opportunity for a Newcastle based business</td>
<td>Leadership, advocacy and capacity building role for the Newcastle Compassionate Communities Collaboration. Collaborator - Corporate and Community Planning Unit.</td>
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<td>9. Our city will publicly showcase, in print and in social media, our local government policies, services, funding opportunities, partnerships, and public events that address our compassionate concerns with living with ageing, life-threatening illness, loss and bereavement, and long term caring. All end of life care-related services within the city limits will be encouraged to distribute this material or these web links including veterinarians and funeral organisations.</td>
<td>Council seeks to carry our functions within a social justice principles framework and in a way that facilitates local communities that are strong, healthy and prosperous. These principles of access, equity, participation and rights apply to all of Council’s planning, policies and services in a whole of community approach. Events can be highlighted in Council’s Events calendar. Information can be distributed through Council’s Libraries.</td>
<td>Council will continue to carry out functions within a social justice principles framework and in a way that facilitates local communities that are strong, healthy and prosperous. These principles of access, equity, participation and rights will be applied to all of Council’s planning, policies and services in a whole of community approach. Collaborator - Corporate and Community Planning Unit.</td>
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<tr>
<td>10. Our city will work with local social or print media to encourage an annual city-wide short story or art competition that helps raise awareness of ageing, dying, death, loss, or caring. Hunter Writers Centre (a local not-for-profit) currently host “Grieve” - an annual creative writing competition which results in live readings and the publication of an anthology. See <a href="https://www.hunterwriterscentre.org/grieve-project">https://www.hunterwriterscentre.org/grieve-project</a></td>
<td>Council will continue to support the Hunter Writers Centre whilst it is based at the Newcastle Regional Library. Collaborator - Corporate and Community Planning Unit.</td>
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### ATTACHMENT A - CCL 260/B/18 - COMPASSIONATE COMMUNITIES CHARTER

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| 11. All our compassionate policies and services, and in the policies and practices of our official compassionate partners and alliances, will demonstrate an understanding of how diversity shapes the experience of ageing, dying, death, loss and care – through ethnic, religious, gendered, and sexual identity and through the social experiences of poverty, inequality, and disentrenchment. | Council seeks to carry out our functions within a social justice principles framework and in a way that facilitates local communities that are strong, healthy and prosperous. These principles of access, equity, participation and rights apply to all of Council’s planning, policies and services in a whole of community approach. | Council will continue to carry out our functions within a social justice principles framework and in a way that facilitates local communities that are strong, healthy and prosperous. These principles of access, equity, participation and rights will be applied to all of Council’s planning, policies and services in a whole of community approach.  
Planner/Collaborator - Corporate and Community Planning Unit. |
| 12. We will seek to encourage and to invite evidence that institutions for the homeless and the imprisoned have support plans in place for end of life care and loss and bereavement. | NSW Corrective Services are responsible for all custodial and community corrective services. NSW Family and Community Services are responsible for funding specialist homelessness services (SHS). Within the Newcastle SHS, there are no institutional homeless care facilities. The preferred approach is housing first, within a supported service model, which includes referral to appropriate health services as required. FACS is currently seeking tenders for “Social impact investments tackling homeless” proposals. | Advocate to NSW Corrective Services seeking a supportive and compassionate approach to end of life care and loss and bereavement within custodial services.  
Advocate to NSW FACS to continue to provide a “housing first” model with support services as required.  
Leader - Lord Mayor’s office. |
| 13. Our city will establish and review these targets and goals in the first two years and thereafter will add one more sector annually to our action plans for a compassionate city – e.g. hospitals, further & higher education, charities, etc. | A number of these targets and goals are not under Council’s direct control. A number of targets and goals are already being delivered by either Council or through various community-based organisations. | Leadership, advocacy and capacity building role for the Newcastle Compassionate Communities Collaboration of which Council will be a participatory member.  
Collaborator - Corporate and Community Planning Unit. |

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<td>community &amp; voluntary organizations, police &amp; emergency services, and so on.</td>
<td>A potential support organisation for a number of actions would be the Hunter New England and Central Coast (HNECC) Primary Health Network (PHN). The Hunter PHN is a not for profit organisation funded by the Commonwealth government to improve the efficiency and effectiveness of the primary health care system. The purpose of the Hunter PHN is to deliver innovative, locally relevant solutions that measurably improve the health outcomes of our communities and they seek to do this through formal partnerships and funding agreements.</td>
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ITEM-84  CCL 28/08/18 - RESIDENTIAL ROADS STREET LIGHTING UPGRADE

REPORT BY: STRATEGY AND ENGAGEMENT
CONTACT: INTERIM DIRECTOR STRATEGY AND ENGAGEMENT / MANAGER CORPORATE AND COMMUNITY PLANNING

PURPOSE

For Council to approve a replacement program for street lights on residential roads in Newcastle which will include replacement of non-efficient street lights with Light Emitting Diode (LED) lighting.

RECOMMENDATION

1 Council resolves to engage Ausgrid at the cost of $3,425,000 to replace all non-efficient residential road street lighting with Light Emitting Diode lighting.

KEY ISSUES

2 Ausgrid services around 250,000 streetlights on behalf of more than 30 local councils, community associations and statutory authorities across the network, including the dispatch of dedicated crews to repair faults. As a Distribution Network Service Provider (DNSP) Ausgrid is not responsible for street and other public lighting. This responsibility generally falls upon local councils or the roads authority. However, as a DNSP, Ausgrid is currently required to provide certain public lighting infrastructure services to enable the delivery of public lighting by local councils and other authorities. These services are provided to local councils as well as state or federal agencies, who are known as Public Lighting Customers.

3 In the Newcastle Local Government Area (LGA), Ausgrid currently maintains over 14,000 streetlights for Council, of which just over 2,000 are currently LED. The remainder are a mix of fluorescent, sodium and mercury vapour lighting which is inefficient technology, with higher energy use and maintenance costs. Energy use from street lighting accounts for around half of Council’s total energy consumption.

4 After several years of trials and negotiations with councils, Ausgrid is now offering to undertake accelerated replacement of street lighting on residential roads to LED and has signaled that an upgrade to main road lighting is also likely to be available in the near future. Since 2013, Ausgrid has successfully deployed more than 40,000 LED lights which provide more effective lighting, a higher quality white light and, in many cases, a substantial improvement in compliance outcomes.
5 Council has identified 5,312 street lights on residential roads to be replaced with LED. The upgrade will result in a reduction in energy cost and consumption, saving 1.38GWh of electricity annually and a reduction in annual maintenance charges. It will also assist Council in meeting its 2020 Carbon and Water Management Targets of a 30% reduction in electricity use and for 80% of streetlighting to be LED.

6 Early acceptance of Ausgrid’s proposal means that Ausgrid resources can be scheduled to begin works and complete the upgrade within 24 months enabling energy and maintenance savings to be realised as soon as possible. Otherwise the timeframe could be several years before the program commences in the Newcastle LGA as Ausgrid schedules in the full 100,000 light replacements across all councils in their area of operation.

FINANCIAL IMPACT

7 The proposal from Ausgrid has a capital cost of $3.425 million which requires an initial upfront payment of 20% of the capital charges to be made within the 2018/19 financial year and progress payments as the work is completed over the 2019/20 financial year. There is also a potential volume discount that will be applied after committed volumes across councils are known. The replacement of these lights will result in estimated annual savings of $240,000 in energy costs, $73,000 in maintenance costs and a one-off energy saving certificate payment of $355,000. While these costs will be borne by Council at some point in any case, accelerating the replacement means that savings can be realised sooner and that the charges will not be subject to an adjustment based on future regulatory charges.

8 This expenditure is not currently budgeted this financial year. The delivery program will be adjusted at the September Quarterly Review to accommodate the proposed expenditure for the 2018/19 financial year and the remaining cost will be included in Council's 2019/20 Our Budget. The works program will be reprioritised to ensure the forecast budget surplus is maintained.

COMMUNITY STRATEGIC PLAN ALIGNMENT

9 In the Newcastle 2030 Community Strategic Plan, these projects align with the following strategies and objectives:

   i) Protected Environment - (2.1c) Greater efficiency in the use of resources, and (2.3a) environment and climate change risks and impacts are understood and managed;

   ii) Liveable and Distinctive Built Environment - (5.4b) Plan, provide and manage infrastructure that continues to meet community needs;

   iii) Smart and Innovative - (6.2a) A culture that supports innovation and creativity at all levels; and
iv) Open and Collaborative Leadership - (7.4b) A local government organisation of excellence.

IMPLEMENTATION PLAN/IMPLICATIONS

10 Implementation of the street lighting upgrade is dependent on Council authorising Ausgrid to commence the program. Once formal approval is provided, Ausgrid will schedule the work with Council.

RISK ASSESSMENT AND MITIGATION

11 Ausgrid will be responsible for managing the upgrade of the street lighting and has undertaken significant trials of the proposed lighting to ensure quality and compliance with road lighting categories.

RELATED PREVIOUS DECISIONS

12 At the Ordinary Council Meeting held on 18 October 2011, the revised draft Newcastle 2020 Carbon & Water Management Action Plan (Carbon & Water MAP) was adopted by Council which set targets of a 30% reduction in electricity use and for 80% of street lighting to be best practice technology by 2020.

13 At the Ordinary Council Meeting held on 26 April 2017, Council received a report noting the Ausgrid trials being conducted with LED lights and that a further report would be tabled once this evaluation was completed and evaluated.

14 At the Ordinary Council Meeting held on 25 July 2017 Council adopted five key actions as part of its involvement in the Cities Power Partnership, which included an action to roll out LED street lighting across the LGA.

CONSULTATION

15 Extensive consultation with the community and key stakeholders was undertaken in development of the Carbon & Water MAP and the Newcastle Smart City Strategy.

BACKGROUND

16 After undertaking several years of trials, Ausgrid is now ready to commence a first stage upgrade to all residential road lighting to LED. Councils are currently discussing with Ausgrid the upgrade of over 100,000 street lights on residential roads with LEDs. Ausgrid has advised that this is likely to be the first of several large-scale replacement programs that may be available simultaneously on different classes of roads and public spaces.
OPTIONS

Option 1

17 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

18 That Council does not resolve to accelerate residential street lighting replacement and only replaces old street lighting as it fails. This will result in continued higher energy costs, consumption and higher maintenance costs. This is not the recommended option.

REFERENCES

ATTACHMENTS

Nil.
ITEM-85 CCL 28/08/18 - REVISED ACQUISITIONS AND DEACCESSIONING POLICY

REPORT BY: ART GALLERY
CONTACT: INTERIM DIRECTOR CITY WIDE SERVICES / ART GALLERY DIRECTOR

PURPOSE

To adopt a revised version of the Art Gallery Acquisitions and De-accessioning Policy.

RECOMMENDATION

1 That Council adopts the revised Art Gallery Acquisitions and De-accessioning Policy at Attachment A.

KEY ISSUES

2 The current policy has not been reviewed since 2011. It is good practice for policies adopted by the elected Council to be revised and re-adopted in the first year of each Council term.

3 Amendments in the revised Art Gallery Acquisitions and De-accessioning Policy (revised Policy) (Attachment A) include:

   i) Changes to acquisitions limits to be consistent with staff delegation. Acquisitions over $1M to be approved by the elected Council.

   ii) The Acquisitions and De-accessioning Committee is governed by a Charter which is to be adopted by the Chief Executive Officer.

   iii) Deletion of sections of the policy detailing procedure. Works of Art are managed through existing Art Gallery procedures that align to international Museum standards for collection management and reference to the procedure within the policy was a duplication.

   iv) Committee member conflicts of interest will be addressed by the Committee Charter and are currently addressed by the Code of Conduct.

FINANCIAL IMPACT

4 There is no change to the Newcastle Art Gallery’s Acquisitions budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

5 Open and Collaborative Leadership – the revised Policy ensures an open, inclusive and accountable approach to the acquisition and de-accessioning of Works of Art within the Newcastle Art Gallery Collection.
6 Vibrant and Activated Public Places – the revised Policy ensures a relevant framework to evaluate the Newcastle Art Gallery Collection. The Collection is culturally and historically significant to the community, attracts visitors to Newcastle and reflects our civic pride and creative expression.

IMPLEMENTATION PLAN/IMPLICATIONS

7 The revised Policy will be supported by the newly appointed Acquisitions and De-accessioning Committee.

8 The Acquisitions and De-accessioning Committee Charter will be developed and approved by the Chief Executive Officer. A call for Expressions of Interest for the new Committee will occur once the Policy has been approved and adopted and will be shared with Councillors.

RISK ASSESSMENT AND MITIGATION

9 The revised Policy and formation of the Acquisitions and De-accessioning Committee form a key element of risk controls to support appropriate acquisition and de-accessioning of Works of Art.

RELATED PREVIOUS DECISIONS

10 The current Policy was adopted at the Ordinary Council Meeting held on 16 August 2011.

11 Prior to this, the ‘Acquisitions Policy’, was approved by Council at the Ordinary Council Meeting held on 31 March 1992.

CONSULTATION

12 Consultation was not undertaken for the review of the Policy, as it is an internal policy.

BACKGROUND

13 The Art Gallery collection is one of the most significant public collections in Australia. There are 6,445 Works of Art currently in the Art Gallery’s collection, celebrating a wide variety of styles and mediums. These include primary collection areas of Australian Painting, Ceramics, Contemporary Photographs, Prints and Drawings, Sculpture, Video and New Media. The Art Gallery also holds a significant collection of Japanese ceramics. Works of Art range from colonial to contemporary periods, celebrating Novocastrian, Australian (Indigenous and non-Indigenous) and international artists.

14 The revised Policy is the structural governance framework by which the Art Gallery acquires or de-accessions Works of Art. It is vital that the Policy is relevant and up to date.
OPTIONS

Option 1

15 The recommendation as at Paragraph 1. This is the recommended option.

Option 2

16 Retain the current Acquisitions and De-accessioning Policy. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: Revised Art Gallery Acquisition and De-accessioning Policy
Art Gallery Acquisitions and De-accessioning
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<td>Art Gallery Director</td>
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<td>Curator Newcastle Art Gallery</td>
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Part A Preliminary

1 Purpose

1.1 The purpose of the policy is to provide a framework for the acquisition and de-accession of Works of Art in the Collection.

2 Definitions

2.1 Unless the context determines otherwise:

2.1.1 Collection means all Works of Art contained in the Art Gallery or to be acquired for the Art Gallery's Collection.

2.1.2 Committee means the Acquisitions and De-accessioning Committee.

2.1.3 Charter means the governing guidelines for the Committee.

2.1.4 Donation means either a gift of a Work of Art directly to the Art Gallery or as a Cultural Gift Program Donation (CGP) through the Australian Government's Cultural Gifts Program.

2.1.5 Gallery means the Newcastle Art Gallery.

2.1.6 Public Art means Works of Art to be staged in a public domain.

2.1.7 Work/s of Art means artwork, art piece, art object or an aesthetic item or artistic creation.

2.2 Unless stated otherwise, a reference to a clause is a reference to a clause of the policy.

3 Scope

3.1 The policy applies to all acquisitions and de-accessioning of Works of Art into and out of the Gallery Collection.

3.2 The policy does not apply to Public Art.

4 Principles

4.1 Council commits itself to the following principles:

4.1.1 Accountability and transparency - The policy provides a framework for the transparent and relevant acquisition and de-accessioning of Works of Art to and from the Gallery Collection.

4.1.2 Reflecting the artistic, cultural and social development of the City of Newcastle.

4.1.3 Providing the community with opportunities to engage with Works of Art in a highly accessible public space.

4.1.4 Recognising artists from Newcastle and the Hunter Region.
4.1.5 Enhancing the community's awareness, understanding and appreciation of art.

Part B Areas of collecting

5 Primary areas of collecting

5.1 The Gallery aims to collect:

5.1.1 Australian art of all regions with emphasis on:

5.1.1.1 Works of Art pertaining to Newcastle and the Hunter Region.

5.1.1.2 Works of Art by outstanding artists associated with Newcastle and the Hunter Region.

5.1.1.3 Representation of the full range of styles and movements in all major visual arts media.

5.1.1.4 Contemporary art to ensure low cost and high value masterpieces for the future.

5.1.2 Australian ceramics (20th Century - present day) to fully represent the development of this art medium.

5.1.3 Japanese ceramics (20th Century - present day) to fully represent the development of this art medium.

5.1.4 International Works of Art where they have relevance to, and inform, the existing Works of Art in the Gallery's Collection.

Part C Acquisitions

6 Criteria for acquisition

6.1 The Gallery will only acquire a Work of Art for the Collection if the Work of Art is:

6.1.1 Relevant to, and inform, the Collection including one of the Primary areas of collecting.

6.1.2 Unencumbered to allow unconditional right to retain custody and control in perpetuity.

6.1.3 Unencumbered to allow the legal and equitable title to transfer to Council.

6.1.4 Able to be cared for and stored appropriately by the Gallery.

6.1.5 Of Gallery / Museum quality and in a good state of preservation.

6.1.6 Not a duplicate of a Work of Art already in the Collection.

6.1.7 Being acquired primarily for public display.
7 Recommendation and approval of acquisitions

7.1 If the Art Gallery Director considers that a Work of Art is appropriate for acquisition by purchase, donation or bequest, the Art Gallery Director will report to the Committee recommending that the Work of Art be considered.

7.2 The Committee will:

7.2.1 Review the report of the Art Gallery Director against the primary areas of collecting provided in clause 5 and criteria for acquisition provided in clause 6.

7.2.2 Make a recommendation on the acquisition of the Work of Art.

7.3 If the Committee recommends the acquisition of a Work of Art, the Art Gallery Director may acquire the Work of Art in accordance with Council’s Acquisitions and De-accessioning Procedure and in accordance with staff financial authorisations. The purchase of Works of Art with Council funding to the value of $1 million or more will be approved by the resolution of the elected Council. Approval for budget increases to the acquisitions budget will be sought through the adopted quarterly review process and reported to Council.

7.4 If the Committee does not recommend the acquisition of the Work of Art, the Council must not acquire the Work of Art.

Part D De-accessioning

8 Criteria for de-accessioning

8.1 The Gallery may only de-accession Works of Art if it is established that the Work of Art:

8.1.1 Is inconsistent with this policy or was erroneously included in the Collection.

8.1.2 Has no clear legal and equitable title.

8.1.3 Has been lost or stolen.

8.1.4 Has its authenticity proven to be in question.

8.1.5 Is damaged or suffered serious deterioration in condition.

8.1.6 Is an obvious duplication or repetition of the Work of Art already in the Collection.

9 Recommendation and approval for de-accessioning

9.1 If the Art Gallery Director considered that a Work of Art is no longer appropriate to the Collection, the Art Gallery Director will report to the Committee recommending that the Work of Art be de-accessioned.

9.2 The Committee will:

9.2.1 Review the report of the Art Gallery Director against the Primary areas of collecting provided in clause 5 and criteria for acquisition provided in clause 6.
9.2.2 Make a recommendation on the de-accessioning of the **Work of Art**.

9.3 If the **Committee** recommends the de-accessioning of a **Work of Art**, the Council may de-accession the **Work of Art**.

9.4 If the **Committee** does not recommend that the **Work of Art** be de-accessioned, the Council must not de-accession the **Work of Art**.
NOTICES OF MOTION

ITEM-21 NOM 28/08/18 - SEWERAGE SERVICES REQUIRED FOR HEXHAM

COUNCILLOR: A ROBINSON

PURPOSE

The following Notice of Motion was received on 21 August 2018 from the abovenamed Councillor.

MOTION

That Council:

1 Reiterates its support for Hexham being connected to Hunter Water’s sewerage services based on its proximity to the Hunter River and Ramsar listed SEPP14 Wetlands, and the significant health and environmental risk posed from sewage contamination to these water bodies.

2 Write to Hunter Water’s portfolio Minister requesting that the sewering of Hexham be considered for inclusion in Hunter Water’s future capital works program on the grounds of environmental and health risk to those that live and work in the township.

3 Write to NSW Health and the NSW Environment Protection Authority (EPA) confirming their continued support for the sewering of Hexham on the grounds of environmental and health risk to those that live and work in the township.

BACKGROUND

There are more than 2,000 homes throughout the lower Hunter that are connected to reticulated water but not the reticulated sewer services of Hunter Water.

Typically, these customers rely on private pump out services or onsite treatment and disposal as a means to manage the sewage generated from a domestic household. The design, installation, and operation of these systems are regulated by Councils. Onsite systems regularly fail and when they do, can cause environmental and public health risks.

The township of Hexham is the only area within the Newcastle Local Government area that is not connected to Hunter Water’s sewerage network.

In 2001 the EPA commissioned a report that identified Hexham as one of 13 areas in Hunter Water’s area of operation that was not connected to sewer. In 2002 the EPA developed an environmental survey to rank the likely impact for these areas. The NSW Ministry of Health also had input into this approach to ensure that health issues were also addressed.
Hexham was subsequently given a Priority A environmental ranking on the grounds that the receiving waters are both environmentally sensitive and a significant risk is posed by inadequate sewage management. A system upgrade will provide significant environmental improvements and reductions in human health risks. Specifically, this high ranking was assigned because of Hexham’s proximity to the Hunter River and associated residential, recreational and commercial uses.

Correspondence from Hunter Water to Newcastle City Council in 2014 estimated the cost of connecting the 70 commercial and residential properties in Hexham to the sewer network at less than $5.1 million.

ATTACHMENTS

Nil
ITEM-22  NOM 28/08/18 - SUPPORT FOR THE EXPANSION OF THE
REFUGEE COMMUNITY SUPPORT PROGRAM

COUNCILLORS: D CLAUSEN, M BYRNE, C DUNCAN, J DUNN, N NELMES,
P WINNEY-BAARTZ, E WHITE AND J MACKENZIE

PURPOSE

The following Notice of Motion was received on 16 August 2018 from the
abovenamed Councillors.

MOTION

That Newcastle City Council:

1 Acknowledges that the City of Newcastle is a Refugee Welcome Zone
   (Attachment A) and has a well-established commitment to support and
   encourage refugees to settle here;

2 Welcomes the Federal Government’s positive decision to support refugees
   coming to Australia by announcing a Community Support Program (CSP), with
   an intake of 1,000 per annum from 1 July 2017;

3 Notes with concern that:
   a. for each refugee supported under the CSP, one place is removed
      from the Australian Government Humanitarian intake;
   b. the CSP intake is set at only 1,000 per annum;
   c. the eligibility criteria for the CSP are restrictive and exclude many of
      the refugees who are most in need of resettlement;
   d. the fees imposed by Government that are borne by the community
      sponsor may create a barrier to sponsorship;

4 Writes to the Prime Minister, the Minister for Home Affairs, and the Secretary of
   the Department of Home Affairs, calling on the Federal Government to improve
   the Community Support Program (CSP) by making the following changes:
   a. make CSP places additional to the existing humanitarian intake;
   b. increasing Australia’s annual humanitarian intake of refugees to
      27,000 by 2025 to address the global humanitarian crisis;
   c. revise eligibility criteria to include those in most urgent need of
      resettlement as identified by the United Nations refugee agency
      (UNHCR), as well as those seeking family reunion in Australia, and
      those who Australian employers may wish to sponsor. Priority should
      be given to UNHCR-referred candidates and employability should
      not be an eligibility criterion;
   d. adopt a more affordable visa fee structure for the CSP, to make the
      program fairer and more accessible;
   e. allow community, family and businesses to act as sponsors;
f. provide adequate support services including access to Medicare, education, and English language tuition, to assist refugees to integrate successfully into our communities.

BACKGROUND

Several Councillors have been approached by Amnesty International Newcastle Branch about support for their campaign to improve the Federal Government's Refugee Community Support Program.

The City of Newcastle has long been at the forefront of local government when it comes to providing real and symbolic support for refugees settling in Australia.

We are proudly a Refugee Welcome Zone (Attachment A).

The City of Newcastle believes that our ethnic, religious and cultural diversity is an integral part of our Newcastle’s identity and intrinsic to our vitality as a place and society.

Multiculturalism is in the interest of all residents and citizens as it expresses our sense of fairness and inclusion and it enhances respect and support for cultural, religious and linguistic expression.

Key to our support for a multicultural Newcastle is doing as much as we can in Local Government to assist refugees looking to call our city home.

**Support for Amnesty International’s ‘My New Neighbour’ Campaign from Local Government:**

Amnesty Newcastle, through Convenor Kevin Sweeney, advises that (Attachment B):

“Since the launch of this initiative, eleven local Councils and one Territory Government have passed motions supporting the Community Refugee Sponsorship Initiative and calling on the Australian Government to make these changes to the CSP. Significantly, on all of these occasions the vote has been unanimous – indicating broad support across all political perspectives.”
Motions have been passed by the following:

1. ACT Government
2. Whittlesea Council (Vic)
3. Randwick Council (NSW)
4. Griffith Council (NSW)
5. Albury Council (NSW)
6. Wodonga Council (Vic)
7. Wagga Wagga Council (NSW)
8. Moreland Council (Vic)
9. Maribyrnong Council (Vic)
10. Fremantle Council (WA)
11. Nowra Council (NSW)
12. Inner West Council (NSW)

ATTACHMENTS

Attachment A: City of Newcastle Refugee Welcome Zone declaration
Attachment B: Amnesty Newcastle briefing paper: ‘My New Neighbour – a Community Refugee Sponsorship Initiative
The City of Newcastle declares its Local Government Area as a

**Refugee Welcome Zone**

This declaration is a commitment in spirit to:

- welcoming refugees into our community,
- upholding the human rights of refugees,
- demonstrating compassion for refugees and
- enhancing cultural and religious diversity in our community.

Councillor Nualali Nelmes
LORD MAYOR OF NEWCASTLE

Date 28 May 2015

This Declaration is proudly supported and endorsed by the

Refugee Council of Australia
Newcastle
Attachment B

My New Neighbour – a Community Refugee Sponsorship Initiative

The Problem
- There are currently 65 million displaced people in the world and 22 million of these are refugees.
- Currently the countries that are adjacent to areas of conflict take the vast majority of these people e.g. Kenya, Turkey and Bangladesh. Often these are countries with limited resources.
- Wealthy countries, such as Australia, need to do more to help resettle refugees.

A Solution
- The Australian community has consistently demonstrated generosity and a willingness to help those in need where they have a personal connection with them.
- Six Australian organisations have joined together to launch a new initiative to resettle refugees - the Community Refugee Sponsorship Initiative (CRSI). These organisations are: Refugee Council of Australia, Amnesty International Australia, Save the Children Australia, Welcome to Australia, Rural Australians for Refugees and the Australian Churches Refugee Taskforce.
- Comprehensive information on the initiative is available on the website http://www.ausrefugeesponsorship.com.au
- Amnesty is calling the new initiative “My New Neighbour”; information attached.
- Canada has been running a very successful community refugee sponsorship program since the late 1970’s. Over that time community organisations and individuals have sponsored more than 280,000 refugees. Currently their annual intake under this program is 16,000. This intake is in addition to the Canadian Government humanitarian intake. The UK is now running a similar program.

The current Community Support Program (CSP)
- The Australian Government ran a pilot community sponsorship program from 2013 to 2017
- As of July 2017 this was converted to an ongoing ‘Community Support Program’
- This program is seriously flawed:
  - The costs are prohibitive: the visa application fee to the Commonwealth is $19,124 per application. The sponsor has to meet multiple costs, many government imposed, totaling more than $50,000 for one refugee and more than $90,000 for a family of five. This is three times the cost to sponsor under the Canadian program.
  - The intake is capped at 1,000 per annum
  - Every place filled under the CSP is taken off the humanitarian intake i.e. there is no net increase in the number of refugees accepted.
  - The eligibility criteria are much too restrictive; it is effectively restricted to adults aged 18-50 with good English language skills who have received an offer of employment or can demonstrate they have a high likelihood of employment. This excludes many of the refugees who are most in need of resettlement.
Changes required to the current Community Support Program

- Not take places from others in need: the CSP must be above and beyond existing humanitarian or visa quotas.
- Size of program: The initial program size should be 5,000 places per annum, growing to 10,000 places per annum over the next five years.
- Eligible refugees: These should include those in most urgent need of resettlement as identified by the United Nations refugee agency (UNHCR), as well as those seeking family reunion in Australia and those who Australian employers may wish to sponsor. Priority should be given to UNHCR-referred candidates and employability should not be part of the eligibility criteria.
- Limit costs: An improved CSP must ensure it is not too costly for refugees or their sponsors. The concept of community sponsorship involves the sponsoring community organisation covering the costs associated with medical checks prior to departure, airfares and the first year of living in Australia (including rent, food and living expenses). Government imposed costs should be minimised.
- Provide adequate support and services: In order to assist people seeking asylum to integrate successfully into our communities, it is essential that adequate settlement and support services are provided. The Australian Government should provide access to Medicare, English language tuition and education.
- Eligible sponsors: Allow community, family and businesses to act as sponsors. Amnesty recommends that there be three main categories of potential sponsors:
  - family sponsors bringing refugee family members residing overseas who are in need of international protection;
  - independent sponsors such as faith-based groups, universities and community associations who may sponsor those most in need, as identified by UNHCR, who do not have family links and who are not yet job ready;
  - business/employer sponsors who want to employ job-ready refugees to meet dual commercial and corporate social responsibility objectives.

Support from other Councils

Since the launch of this initiative, eleven local Councils and one Territory Government have passed motions supporting the Community Refugee Sponsorship Initiative and calling on the Australian Government to make these changes to the CSP. Significantly, on all of these occasions the vote has been unanimous – indicating broad support across all political perspectives.

Motions have been passed by the following:

1. ACT Government
2. Whittlesea Council (Vic)
3. Randwick Council (NSW)
4. Griffith Council (NSW)
5. Albury Council (NSW)
6. Wodonga Council (Vic)
7. Wagga Wagga Council (NSW)
8. Moreland Council (Vic)
9. Maribyrnong Council (Vic)
Local Solution and Local Action

- The Newcastle community has demonstrated a high level of support for refugees and is willing and wanting to do more.
- Newcastle City Council has previously declared Newcastle a “Refugee Welcome Zone”. Supporting this initiative would enable Newcastle City Council to transform this sentiment into meaningful action.
- The key action for Newcastle City Council to support this initiative is to pass a resolution calling on the Australian Government to improve and expand the current Community Support Program.

Kevin Sweeney
Convenor Amnesty Newcastle
0466 588 762
kevin2sweeney@me.com
newcastle@amnesty.org.au
CONFIDENTIAL REPORTS

ITEM-16 CON 28/08/18 - SALE OF LAND FOR UNPAID RATES AND CHARGES

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / INTERIM CHIEF FINANCIAL OFFICER

REASON FOR CONFIDENTIALITY

This report has been classified confidential in accordance with the provisions of the Local Government Act 1993 (Act) as follows:

- Section 10A(2)(b) of the Act provides that Council can close a meeting to consider matters relating to the personal hardship of any resident or ratepayer.

- Section 10B(1)(a) and (b) of the Act provides that the discussion of the item in a closed meeting must only:

  a include as much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security: and

  b the Council or Committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

GROUNDS FOR CLOSING PART OF THE MEETING

In respect to Section 10D(2) the grounds on which part of a meeting is to be closed for the discussion of the particular item must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. Accordingly, an appropriate resolution to proceed is required first.

MOTION TO PROCEED

The discussion of the confidential report take place in a closed session, with the press and public excluded, for the following reasons:

A The matter relates to the personal hardship of any resident or ratepayer in being unable or unwilling to pay outstanding rates and charges.

B The closed session involves only as much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security.

C The matter relates to the identification of ratepayers and their property addresses who owe significant sums of rates and charges to Council. These properties are recommended for sale for debt recovery purposes.
ITEM-17 CON 28/08/18 - TENDER REPORT HEAVY PATCHING (FLEXIBLE PAVEMENT) - CONTRACT NO 2019/006T

REPORT BY: INFRASTRUCTURE AND PROPERTY
CONTACT: DIRECTOR INFRASTRUCTURE AND PROPERTY / INTERIM MANAGER ASSETS AND PROJECTS

REASON FOR CONFIDENTIALITY

This report has been classified confidential in accordance with the provisions of the Local Government Act 1993 (Act) as follows:

- Section 10A(2)(d) of the Act provides that Council can close a meeting to consider commercial information of a confidential nature that would if disclosed prejudice the commercial position of the person who supplied it.

- Section 10B(1)(a) and (b) of the Act provides that the discussion of the item in a closed meeting must only:
  (a) include as much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security; and
  (b) occur if the Council is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.

GROUNDs FOR CLOSING PART OF THE MEETING

In respect to section 10D(2) of the Act, the grounds on which part of a meeting is to be closed for the discussion of the particular item must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. Accordingly, an appropriate resolution to proceed is required first.

MOTION TO PROCEED

The discussion of the confidential report take place in a closed session, with the press and public excluded, for the following reasons:

A The matter relates to tenders for Heavy Patching (Flexible Pavement) for Contract No. 2019/006T.

B It is contrary to the public interest to discuss tenders in an open meeting because the information provided to Council by tenderers is provided on the basis that it will be treated by Council as commercial-in-confidence. A practice of disclosing sensitive commercial information to the public, including competitors, could result in the withholding of such information by tenderers. This would lead to a reduction in the supply of information relevant to Council's decision. A disclosure of confidential information by Council could result in Council being the subject of litigation for breach of confidence.

C The closed session involves only as much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security.