ORDINARY COUNCIL MEETING
13 DECEMBER 2016

CCL 13/12/16

NOTICES OF MOTION DISTRIBUTED UNDER SEPARATE COVER

1. ITEM 18: NOM 13/12/16 - OPEN AND TRANSPARENT GOVERNANCE STRATEGY
2. REPORT ON NOM - ITEM-18 - OPEN AND TRANSPARENT GOVERNANCE STRATEGY

3. ITEM 19: NOM 13/12/16 - POLICY AND BUDGETARY SUPPORT FOR NEWCASTLE COMMUNITY ARTS DEVELOPMENT
4. REPORT ON NOM ITEM-19 - POLICY AND BUDGETARY SUPPORT FOR NEWCASTLE COMMUNITY ARTS DEVELOPMENT

5. ITEM 20: NOM 13/12/16 - OPEN AND TRANSPARENT GOVERNANCE - LIFTING THE CORPORATE VEIL
6. REPORT ON NOM ITEM-20 - OPEN AND TRANSPARENT GOVERNANCE - LIFTING THE CORPORATE VEIL

7. ITEM 21: NOM 13/12/16 - RE-ESTABLISHMENT OF COUNCIL’S CYCLING WORKING PARTY AND CONVERT TO ADVISORY COMMITTEE
8. REPORT ON NOM ITEM-21 REESTABLISHMENT OF COUNCIL’S CYCLING WORKING PARTY AND CONVERT TO ADVISORY COMMITTEE

9. ITEM 22: NOM 13/12/16 - INCREASING DOG LEASH FREE AREAS INCLUDING ENCLOSED AREAS
10. REPORT ON NOM ITEM-22 - INCREASING DOG LEASH FREE AREAS INCLUDING ENCLOSED AREAS
THE CITY OF NEWCASTLE
Notice of Motion 13/12/16

ITEM 18: NOM 13/12/16 - OPEN AND TRANSPARENT GOVERNANCE STRATEGY

COUNCILLORS: T DOYLE AND M OSBORNE

PURPOSE

The following Notice of Motion was received on 1 December 2016 from the abovementioned Councillors:

MOTION

That,

1. In view of the regrettable delay in developing an Open and Transparent Governance Strategy in accordance with council’s resolution of 28th June 2016 (Item-12 NOM 28/06/16) council place the adopted wording of its decision on public exhibition as soon as possible until mid-February 2017, seeking relevant feedback, comment, ideas and suggestions from the community on the matters raised in that resolution, and on any other matters related to an effective "Open and Transparent Governance Strategy".

2. Council develop an appropriate Newcastle Voice survey seeking similar feedback, comment, ideas and suggestions from the community during this period.

3. Council conduct community workshops in February to foster community discussion on Council’s governance and to gain further community input into Council’s Governance Strategy.

A summary and analysis of the responses from the public exhibition, community workshops and the NV survey be presented to council with the already requested report on the "Open and Transparent Governance Strategy" to be presented in February next year.

BACKGROUND

Council passed the resolution reproduced below at its 28th June meeting this year. Had the resolution been enacted, Council would be currently refining a new draft Core Strategic Document to guide the implementation of Council’s adopted core principle of Open and Collaborative Leadership within its Community Strategic Plan.

It is clear from the resolution that this Council is committed to enacting a policy of more open and transparent governance than currently exists with current policies, codes and procedures.

This council has resolved to implement open governance measures. For those measures to become a reality, we need a clear strategy of implementation informed by community input and principles of openness, transparency and accountability.

ATTACHMENTS

Attachment A: Resolution of 28/06/16 - ITEM-12 NOM 28/06/16 - OPEN AND COLLABORATIVE LEADERSHIP
Attachment A

ITEM 12 NOM 28/06/16 - OPEN AND COLLABORATIVE LEADERSHIP COUNCILLORS: D CLAUSEN, T CRAKANTHORP, J DUNN, N NELMES AND S POSNIAK

MOTION

That Council:
1. Notes the adopted Newcastle 2030 vision to create a smart, liveable and sustainable city, within a framework of open and transparent leadership.
2. Notes that there is presently no core strategic document for the Open and Transparent Leadership CSP objective.
3. Draft an Open and Transparent Governance Strategy as a core strategic document. The Strategy is to consider best practice for open councils, including current and planned actions of council to improve transparency.
4. The Strategy is to outline implementation opportunities for:
   a. Delivering procedures which ensure the highest level of transparency, accountability and probity in Civic governance (including implementable solutions to allow open diaries for the Lord Mayor and Chief Executive Officer, improvements to the model Code of Conduct and Code of Meeting Practice, an independent Internal Ombudsman to investigate and respond to complaints about council’s administration)
   b. Achieving community confidence and improved consultation in Council’s practices (including improvements to the accessibility of Public Voice; improved community consultation and notification practices; improved consultation with community including community committees and BIAs)
   c. Delivering procedural reform to better include the community in decision making (including expanding involvement of Committees of Council in decision making; inclusion of Strategic Advisory Committee meetings in Council’s meeting cycle; continue improvements to accessibility of Council’s website)
5. A draft Open and Transparent Governance Strategy is to be produced for Council’s consideration by September 2016
Subject: Report on Notice of Motion 13/12/2016 – Open and Transparent Governance Strategy

Report by: Planning and Regulatory Services

Contact: Acting Director Planning and Regulatory Services

Director Comment

Background

On 21 November 2016, an all Councillor memo detailed a timeline regarding the drafting of an open and transparent governance strategy (the Strategy) as part of a revised Community Strategic Plan (CSP). The timeline identifies the February 2017 Ordinary Council Meeting as the first date that Council can consider a report on the revised CSP with a Councillors workshop to be scheduled prior to that meeting.

Notice of Motion

In the Notice of Motion (NOM) it is suggested that Council's resolution of 28 June 2016 be placed on public exhibition as soon as possible until the middle of February 2017. The purpose of this exhibition being to seek feedback, comment, ideas and suggestions from the community on matters raised in that resolution, and on any other matters related to the Strategy.

The period suggested for the public exhibition would cover all of the December 2016 and January 2017 holiday period. As Councillors are aware public exhibition periods over this period are not ideal. It is suggested that much of the community would be absent from Newcastle during this traditional holiday period and therefore unable to provide comment or feedback.

The NOM also suggests that Council develop a Newcastle Voice (NV) survey to be conducted over the same holiday period and requests that "a summary and analysis of the responses from the public exhibition, community workshops and the NV survey be presented to Council, with the already requested report on the 'Open and Transparent Governance Strategy' in February next year".

As the community consultation period is due to end in the middle of February 2017 and the community workshops are suggested to be held over the Christmas holiday period, it is suggested that insufficient time exists before the 28 February 2017 Ordinary Council Meeting, to properly consider, analyse and research any submissions. Councillors are reminded that current administrative procedures will require Council papers for this meeting to be submitted by 14 February 2017 at the latest.

It is also suggested that by publicly exhibiting the resolution of 28 June 2016, without any developed engagement framework or other strategic policy / document guidance will result in some responses and / or submissions that do not necessarily relate to the subject matter or may generate expectations outside of Council's capacity to deliver which would further delay the analysis of feedback.
THE CITY OF NEWCASTLE
NOM Report to Ordinary Council Meeting 13/12/2016

It is noted that a memo regarding the Office of Local Government (the OLG) Circular “Development of a Model Code of Meeting Practice for Local Councils in NSW” (the Circular) was sent to all Councillors on 6 December 2016. The OLG is seeking submissions from Councils by 20 January 2017. Councillors are invited to make written submissions, to the Interim Chief Executive Officer, for incorporation in Council’s written submission to the OLG, by 13 January 2017.

Alternative method to develop the Strategy

To develop an open and transparent governance Strategy that is responsive, participative and trusted, which also properly considers best practice and legislative obligations, does require engagement and consultation outside of Council.

In order that the Strategy achieves all that is should, it is suggested that before public exhibition, advice and guidance is sought from State Government agencies recognised as having some expertise in this field.

To this end, engagement with the OLG, the New South Wales Ombudsman and the Independent Commission Against Corruption in the Councillor workshop(s) detailed in the memo of 21 November 2016, will provide Council with detailed and specific advice that will ensure that Council adheres to its legal obligations while also facilitating engagement with subject matter experts, who can advise and guide Council towards a Strategy that better serves the community.

Following engagement with these agencies it would be envisaged that Council’s external auditor, O’Connor Marsden, would be requested to have their Governance Practice conduct a review of the draft Strategy, to further guide Council towards a document that is truly open and transparent.

Council’s Communications and Engagement Unit can also prepare a communications plan and together with the draft Strategy can be presented at the Ordinary Council Meeting to be held on 28 February 2017. Following the meeting it is expected that the Strategy would be placed on public exhibition for at least four weeks to enable the community to provide feedback and comment.

Recommendations

It is recommended that Councillors note the following:

1. That a workshop for Councillors regarding the Strategy will be held during February 2017 with input from the OLG, the New South Wales Ombudsman and the Independent Commission Against Corruption.

2. That a communications plan will be developed regarding the Strategy, following the proposed Councillor workshop.

3. That a draft Strategy and supporting communications plan be presented to the Ordinary Council Meeting on 28 February 2017.
MOTION

Newcastle City Council recognises that a significant part of our city’s identity is connected to its vibrant Arts community, encompassing a broad range of cultural activities including, but not restricted to the visual arts, performing arts, writing, musical arts and multi-media. Newcastle also boasts a diverse ethnic and Indigenous community of artists who make a distinct contribution to our cultural landscape. Newcastle City Council recognises the need to ensure that future generations of artists and cultural practitioners find an accessible and stimulating environment in which to develop their talents.

In order to more effectively implement Council’s Cultural Strategy 2016 – 2019, which explicitly recognises the strategic importance of “a dynamic, vibrant culture” to the city’s economic success, Council resolves to allocate a regular budgetary contribution in the form of grants to community arts programs and initiatives.

Council resolves to:

1. Develop guidelines designed to complement Council’s Cultural Strategy 2016 – 2019 and clearly define how funds can be distributed to those community arts groups who demonstrate capacity to advance the city’s cultural landscape.

2. Allocate, within its next four-year planning cycle, provision for ongoing budgetary support with a sum of $200,000 per annum to this Community Arts Development Program.

BACKGROUND

Newcastle Council has a proud history of supporting Community Arts initiatives, from its sponsorship and support for festivals such as The Newcastle Writers Festival and This is Not Art (TINA), to providing premises for the Newcastle Community Arts Centre. However, much of Council’s support for community Arts programs has recently been limited to “in-kind” support.

Council’s Cultural Strategy 2016 – 2019

• guides the strategic development of culture in Newcastle
• directs Council’s resource investment in cultural projects, programs and services and for 2016-2019
• makes transparent Council’s strategic direction to enable public and private partnership in strengthening and growing Newcastle’s cultural vibrancy
• supports Council to fulfil its role as a cultural leader, managing the city’s major cultural institutions and participating in the city’s cultural life
• is intended to be actioned within the context of Council’s Long Term Financial Plan.

An allocation of funds in our annual budget will allow us to implement those aspects of this strategy that apply to the support and development of community arts.
Those Strategies (extracted from *Cultural Strategy 2016 – 2019*) include to:

6. Expose local stories, both historic and contemporary, through cultural programming and build Newcastle’s cultural identity

10. Partner with Newcastle’s small to medium not-for-profit arts and cultural organisations in growing arts and culture in the city

16. Increase support for, and engagement with, local artists, innovative thinkers, academic creatives and cultural practitioners

17. Streamline and make consistent access to support and resources

A clear and fair method of allocating council funding to support the promising cultural endeavours of Newcastle’s community will provide a firm basis for the implementation of our Cultural Strategy.

ATTACHMENTS

Nil
THE CITY OF NEWCASTLE  
NOM Report to Ordinary Council Meeting 13/12/16

SUBJECT: REPORT ON NOTICE OF MOTION - ITEM-19 - NOM 13/12/16 - POLICY AND BUDGETARY SUPPORT FOR NEWCASTLE COMMUNITY ARTS DEVELOPMENT

REPORT BY: PLANNING AND REGULATORY SERVICES

CONTACT: ACTING DIRECTOR PLANNING AND REGULATORY

DIRECTOR COMMENT

The notice of motion documents the need for an allocation of regular budgetary contribution in the form of grants to community arts programs and initiatives. Council is guided by legislation where it provides either financial assistance or sponsorship.

In this context Financial Assistance means payments given to individuals or organisations that are not commensurate with a reciprocal benefit received by Council, whilst Sponsorship means a business transaction in which Council provides a financial contribution or value in-kind in return for negotiated benefits to the City.

The recommendations in the NOM appear consistent with the adopted Cultural Strategy 2016-2019 which includes an action to:

10.1 Establish up to five programming partnerships of three year terms with key programming deliverables for the city.

The inclusion of this action within the Cultural Strategy sought to acknowledge the role small to medium not-for-profit cultural organisations play in growing cultural vibrancy in the city, as well as the need to support the sustainability of not-for-profit arts and cultural organisations in Newcastle.

It is noted that this funding program is intended to complement the existing community grants and sponsorship program Council offers which are also open to, and successfully accessed by, arts and cultural organisations.

A policy titled Growing Sustainable Arts and Cultural Organisations in Newcastle is presently being drafted, together with draft procedures and associated public documentation that ensures the clear and fair method of allocation of Council funding is achieved consistent with legislation. It is intended for this policy to be presented to Council meeting in March 2017.

RECOMMENDATION

The information be noted.
ITEM 20: NOM 13/12/16 - OPEN AND TRANSPARENT GOVERNANCE - LIFTING THE CORPORATE VEIL

COUNCILLORS: M OSBORNE AND T DOYLE

PURPOSE

The following Notice of Motion was received on 1 December 2016 from the abovementioned Councillors:

MOTION

Noting that

a) Newcastle City Council has adopted "Open and Collaborative Leadership" as one of the key strategic directions for Newcastle in the 2030 Newcastle Community Strategic Plan, including considered decision-making based on collaborative, transparent and accountable leadership and our open and collaborative leadership provides the foundation for excellent governance,
b) The NSW Local Government Act 1993 states that Council must ensure that, in the exercise of its regulatory functions, that it acts consistently and without bias, particularly where an activity of the council is affected (Section 8 The council’s charter),
c) Every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act (Section 439 of the Act), and
d) The Independent Commission Against Corruption has highlighted that Councils need to be continually "reducing opportunities for corruption" in Council processes.

That Council:
1. Establish procedures that ensure the highest level of transparency, accountability and probity in our City’s governance by requiring that anyone who has dealings with Council through a Corporate entity (including through tenders, consultancies, development applications, planning agreements etc) provide sufficient company details so that the names and addresses of all Directors and Major or significant beneficiary shareholders are identified,
2. Publish, in a Public Register, the details of the nature of the dealings with Council, the Corporate entity involved, and the Directors and Major or significant beneficiary shareholders, and
3. Write to the Premier, the Minister for Local Government and local State MPs to encourage them to amend the Local Government Act 1993 to require this transparency disclosure for Councils across NSW.

BACKGROUND

Local government needs to be constantly investigating ways to be more open, accountable and transparent with their local community.

Newcastle City Council should be leading the way in open and transparent governance.
Transparency International highlights that hiding behind corporate structures is a corruption risk and recommends the establishment of Public Registers for the disclosure of the beneficial ownership of trust funds and companies. See https://www.transparency.org/glossary/term/beneficial_ownership and https://www.transparency.org/glossary/term/disclosure and https://www.transparency.org/glossary/term/transparency

The Ethics Centre highlights that “Openness is good for government. It not only protects us from ourselves but also regularly improves, sometimes dramatically, the quality and effectiveness of public services.” and “Openness is fundamental to the good operation of politics and government. The availability of information to the community and media ensures the claims of government are interrogated and validated.” See http://www.ethics.org.au/on-ethics/blog/september-2012/open-government-in-action

The NSW Independent Commission Against Corruption (ICAC) recommends taking a proactive approach to corruption prevention and highlights that “effective corruption risk management and corruption prevention depends on commitment from an organisation’s leaders, a sound organisational culture, clear and appropriate organisational values and standards and a comprehensive policy framework.” See https://www.icac.nsw.gov.au

This motion would improve corruption risk management and corruption prevention for Newcastle City Council.

ATTACHMENTS

Nil.
INTERIM CHIEF EXECUTIVE COMMENT

Council's current administrative processes in connection with anyone who deals with Council through the use of a company in the context of the issuing of tenders, consultancies, development applications and planning agreements are compliant with all relevant and existing statutory requirements.

Council has previously considered a similar request on 24 March 2015. In a report to that Council meeting Council was advised:

Council is committed to ensuring that it acts honestly and ethically and that its decisions are made in an ethical, open, transparent and impartial manner. In order to achieve such outcomes, its governance arrangements, such as its policies and procedures, are consistent with such objectives.

Accordingly, Council takes its legal and governance compliance responsibilities under the Local Government Act 1993, the Local Government (General) Regulation 2005, and Council’s Code of Conduct seriously. This legislation together with declarations of interests and the related requirement for Councillors and Council officers not to participate in decision-making when a significant conflict of interest exists, collectively establish a framework for sound governance.

When Council is proposing to enter into third party contractual arrangements, Council can undertake to obtain company searches as part of Council's due diligence/legal risk management arrangements when proposing to enter into significant commercial dealings, such as procurement contracts and leasing transactions, with private sector corporate participants.

That remains current advice.

At that earlier time Council was seeking to ensure information was available to assist Councillors with regard to political donations and potential conflicts of interest regarding dealings with council. s. 147(4) of the Environmental Planning and Assessment Act, 1979 (the Act ) requires a person to disclose the following reportable political donations and gifts (if any) made by a person with a financial interest in the DA within the period commencing 2 years before the DA is made Council's current Development Application form requires applicants, and others related to that application, to declare if they have made a political donation. This information is included in the reports to DAC.

As Councillors may recall, Council's Development Application (DA) form, as an example, conforms with the requirements of s. 78A of the Act and Clause 49 of the Environmental Planning and Assessment Regulation 2000 (Regulation). That is, a DA may be made by
the owner of the land to which the DA relates to, or by any other person with the consent in writing of the owner of the land. Clause 50(1)(a) of the Regulation prescribes that the DA must contain the information specified in Part 1 of Schedule 1 of the Regulation. A copy of Part 1 of Schedule 1 is attached at Attachment A. The requirement to supply the details of the names and addresses of company directors and "significant shareholders" is not included in Part 1 of Schedule 1. Council's legal ability to gather additional information such as the names of all the company directors and major or "significant" shareholders in the DA form is constrained by such statutory limitations.

For information, a copy of the ASIC company search in respect of Wickham Green Pty Ltd, the applicant and owner of the land that was the subject of DA 2016/000351 that was considered and approved by Council's Development Applications Committee on 15 November 2016, is attached at Attachment B. This company search illustrates the scope of the information that is available from the ASIC database. In this instance, the sole shareholder of the company, being the holder of all of the 100 issued ordinary shares, is itself a company.

Should Council require this additional information to be provided, in the event that that information is not disclosed, Council cannot lawfully demand the disclosure of the information, nor can Council delay or refuse to process the DA until the information is supplied.

It is unclear from the NOM the intended scope of the request to search company details, whilst it is reasonable to relate this to planning matters as indicated above, should the scope include all Council interactions this would pose considerable practical implementation challenges. For example this would potentially capture any dealings through Council's Customer Call Centre, which takes on average 500 calls per day, receives 26 applications per day and deals with around 50 customers per day at the counter.

Anyone requiring such corporate information can readily do so by undertaking a search of the public database of the Australian Securities and Investments Commission (ASIC), the Australian corporate regulator's website: asic.gov.au. In effect, such information including the details of the names and addresses of company directors, company secretaries and shareholders, as well as the registered office address/principal place of business address, date of incorporation, and copies of all documents lodged with ASIC (including copies of the company's annual audited financial statements, if the company is of a type required to lodge annual accounts) is currently accessible and available in the public domain. It is considered a duplication for Council to publish and maintain such a Public Register.

By way of comparison, none of the major councils in NSW eg City of Sydney, City of Parramatta, City of Wollongong, Hills Shire and Ku-ring-gai councils require such corporate information to be supplied.

It is noted that S. 8 of the Local Government Act referred to in the Notice of Motion no longer sets out a council's charter nor contains the provision concerning that, in the exercise of its regulatory functions, a council must act consistently and without bias, particularly where an activity of the council is affected. The entirety of the former s. 8 was repealed by Schedule 1 [2] the Local Government Amendment (Governance and Planning) Act, 2016 that commenced operative effect on 23 September 2016. The
replacement s. 8 now sets out guiding principles for councils to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous.

It is proposed that this matter be included on the agenda for the workshop with Councillors process as part of the Open and Transparent Governance Strategy during February 2017.

RECOMMENDATION

That Council:

1. Write to the Premier, the Minister for Local Government, and local State MPs, to encourage them to amend the Local Government Act 1993 to require companies that have dealings with councils across NSW to disclose transparency details of their directors and significant shareholders; and

2. Include on the agenda for the workshop with Councillors process as part of the Open and Transparent Governance Strategy during February 2017.
ATTACHMENT A: Part 1 of Schedule 1 of the Environmental Planning and Assessment Regulation

1 Information to be included in development application

(1) A development application must contain the following information:
(a) the name and address of the applicant,
(b) a description of the development to be carried out,
(c) the address, and formal particulars of title, of the land on which the development is to be carried out,
(d) an indication as to whether the land is, or is part of, critical habitat,
(e) an indication as to whether the development is likely to significantly affect threatened species, populations or ecological communities, or their habitats, unless the development is taken to be development that is not likely to have such an effect because it is biodiversity compliant development,
(ea) for biodiversity compliant development, an indication of the reason why the development is biodiversity compliant development,
(f) a list of any authorities from which concurrence must be obtained before the development may lawfully be carried out or from which concurrence would have been required but for section 79B (2A) or 89J,
(g) a list of any approvals of the kind referred to in section 91 (1) of the Act that must be obtained before the development may lawfully be carried out,
(g1) in the case of State significant development, a list of any authorisations that must be provided under section 89K of the Act in relation to the development,
(h) the estimated cost of the development,
(h1) in the case of State significant development, the capital investment value of the development,
(i) evidence that the owner of the land on which the development is to be carried out consents to the application, but only if the application is made by a person other than the owner and the owner's consent is required by this Regulation,
(j) a list of the documents accompanying the application.
Current Company Extract

Name: WICKHAM GREEN PTY LIMITED
ACN: 605 909 411

Date/Time: 02 December 2016 AEST 07:59:12 AM

This extract contains information derived from the Australian Securities and Investments Commission's (ASIC) database under section 1274A of the Corporations Act 2001.

Please advise ASIC of any error or omission which you may identify.
## Current Company Extract

**WICKHAM GREEN PTY LIMITED**  
ACN 605 909 411

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### Contact Address

Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company'.

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### Officeholders and Other Roles

#### Director

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<th>RICHARD JAMES ARNALL</th>
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## Current Company Extract

### WICKHAM GREEN PTY LIMITED
ACN 605 909 411

### Share Information

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### Members

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**Name:** URBANE TRANSFORMATIONS PTY LTD  
**ACN:** 604 456 233  
**Address:** Unit 18, 7 Revelation Close, TIGHES HILL NSW 2297

#### Class | Number held | Beneficially held | Paid | Document number
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### Documents

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ITEM 21: NOM 13/12/16 - REESTABLISHMENT OF COUNCIL'S CYCLING WORKING PARTY AND CONVERT TO ADVISORY COMMITTEE

COUNCILLORS: T DOYLE AND M OSBORNE

PURPOSE

The following Notice of Motion was received on 1 December 2016 from the abovementioned Councillors

MOTION

That Council:

1. Re-establish Council's Cycling Working Party in its current form so that it continues to operate until September 2018 or until this Council ceases to function in its current form.

2. Draft new terms of reference that will establish the working party as a Strategic Advisory Committee under Section 355 of the Local Government Act to provide strategic advice and guidance on, and assist in the development of, cycleways planning strategies for Council.

BACKGROUND

The term of Council’s Cycling Working Party’s expired on 5 August 2016 because of the anticipated end of this Council’s term of office.

The Working Party works effectively, bringing together community representatives as well as relevant stakeholders such as RMS, Heart Foundation, NPWS, UoN, Newcastle Cycleways Movement to provide a forum to discuss all the issues that relate to Council’s commitment to fulfil the requirements associated with it’s priority funding program for cycleways.

The working party would operate more effectively as a Strategic Advisory Committee since that would give the committee the status to provide regular feedback and advice to Council.

ATTACHMENTS

Nil
DIRECTOR COMMENT

Council’s Cycling Working Party was most recently re-established at the commencement of the current council term. The Terms of Reference of the Cycling Working Party provided for its dissolution on 5 August 2016 (presumably in anticipation of an ordinary council election scheduled to take place on 10 September 2016). Since the date of dissolution, the committee has continued to meet informally.

It is noted that the previous committee was known as a working party, however, Council no longer has a framework providing for working parties and it is therefore appropriate that the committee be known as the Cycling Advisory Committee.

Advisory committees are, as their names suggest, committees that provide advice and recommendations to Council. They do not have decision making powers nor are they delegated any functions pursuant to s. 355 of the Local Government Act 1993 (NSW), the decision making power rightly remains with the elected Council. That is, advisory committees are not s.355 committees.

In addition to resolving to re-establish the Cycling Advisory Committee, the Cycling Advisory Committee Charter (Charter) at Attachment A should be adopted. The Charter provides for:

(a) consistency with other advisory committee charters
(b) membership of the committee to remain the same as it was prior to the dissolution of the Cycling Working Party; and
(c) dissolution of the committee the day before the next ordinary council election (this provides flexibility and allows the committee to continue until the next election including allowing the committee to continue in a period of administration. All committees will then be considered by the elected Council at the commencement of a new council term).

RECOMMENDATION

That Council:

1 Notes this report;
2 Re-establish the Cycling Advisory Committee; and
3 Approves the Cycling Advisory Committee Charter in the form as attached at Attachment A.
Attachment A - Draft Cycling Advisory Committee Charter

Draft Cycling Advisory Committee Charter
[cover page created after adoption]
Committee Charter

<table>
<thead>
<tr>
<th>Charter title</th>
<th>Cycling Advisory Committee Charter</th>
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<tr>
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<td>Advisory</td>
</tr>
<tr>
<td>Charter owner</td>
<td>Director Infrastructure</td>
</tr>
<tr>
<td>Prepared by</td>
<td>Infrastructure Planning - Senior Strategist Transport</td>
</tr>
<tr>
<td>Approved by</td>
<td>Council</td>
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<td>Date approved</td>
<td>TBC</td>
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<tr>
<td>ECM number of Council decision</td>
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<tr>
<td>Dissolution date</td>
<td>One day prior to Council's next ordinary election</td>
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1 Interpretation

1.1 Act means the Local Government Act 1993 (NSW).
1.2 Attendee means Council staff members listed at clause 6 who are entitled to attend meetings.
1.3 Chairperson means a Member elected by the Committee.
1.4 Committee means the Cycling Advisory Committee.
1.5 Community Representative means an individual appointed to the Committee by the Manager Infrastructure Planning.
1.6 Council means the Newcastle City Council and where appropriate includes its administration or any successor council.
1.7 Facilitator means a Council Officer appointed to fulfil the tasks set out in clause 11.
1.8 General Manager/CEO means the General Manager/Chief Executive Officer of Council and includes their nominee or the General Manager of any successor council.
1.9 Member means those described in clause 5.
1.10 Stakeholder Organisation means an organisation listed at clause 5.1.3 to 5.1.7.

Unless stated otherwise, a reference to a clause is a reference to a clause of this Charter.

2 Dissolution

2.1 This Committee remains in existence until one day prior to Council’s next ordinary election or until it is dissolved by a resolution of Council.

3 Authority

3.1 In carrying out its responsibilities, the Committee must at all times recognise that primary responsibility for management of Council rests with the Council and the General Manager/CEO, as provided in the Act.

3.2 The Committee has no executive powers and cannot make decisions on behalf of Council and is not a committee delegated authority to exercise powers under s.355 of the Act.

3.3 Neither the Committee nor any of its Members may direct any Council officer in his or her duties.

3.4 This Committee is not a council committee as defined in s.260 of the Act, because its membership is not constituted solely by councillors.

3.5 The Chairperson of the Committee may, if considered reasonably necessary and in consultation with the General Manager/CEO, request external professional advice to allow the Committee to meet its responsibilities.

3.6 The General Manager/CEO may facilitate, and provide the necessary financial resources, to engage the provision of any such external professional advice required.
4 Responsibilities of Committee

4.1 The responsibilities of the Committee are as follows:

4.1.1 provide advice and recommendations on implementing, monitoring and reviewing Council adopted cycling strategies; and

4.1.2 share information and provide advice to Council with a view to contributing to resolving cycling issues.

5 Membership

5.1 Members of the Committee are:

5.1.1 at least one Councillor, to a maximum of three, or, in the case of appointment of an Administrator, the Administrator or nominated representative;

5.1.2 at least one Community Representative, to a maximum of four;

5.1.3 at least one representative of Newcastle Cycleways Movement, to a maximum of two;

5.1.4 one representative of the Newcastle City Centre Business Improvement Association (Newcastle NOW);

5.1.5 one representative of Roads and Maritime Services;

5.1.6 one representative of the Heart Foundation; and

5.1.7 one representative of the University of Newcastle.

Members are entitled to vote.

The Members may be substituted with alternative nominee appointed by the Stakeholder Organisation.

6 Attendees

6.1 Attendees of the Committee are:

6.1.1 General Manager/CEO;

6.1.2 Council’s Directors;

6.1.3 Other Council staff or external guests at invitation of the General Manager/CEO or the Committee; and

6.1.4 Facilitator.

Attendees do not have entitlement to vote.

7 Termination of Membership

7.1 Membership of the Committee will remain until:

7.1.1 one day prior to Council’s ordinary election, or until the Committee is dissolved, pursuant to clause 2 of this Charter;

7.1.2 the Member resigns; or

7.1.3 their membership is otherwise terminated pursuant to clause 7.2 of this Charter.

7.2 Membership of any Member of the Committee may be terminated by a decision of the Committee due to:
7.2.1 the Member’s non-attendance at three consecutive Committee meetings without prior notification of their non-attendance or the granting of leave by resolution of the Committee; or

7.2.2 the Member’s conduct being inconsistent with this Charter or Code of Conduct.

7.3 Councillor membership terminates immediately upon a Councillor Member no longer being a Councillor.

7.4 If the Member is a:

7.4.1 Community representative:

7.4.1.1 the General Manager/CEO and/or Manager Infrastructure Planning, in consultation with Councillors, will determine a replacement member to the committee pursuant to clause 8.1 of this Charter, where applicable. If not applicable, the Facilitator will commence a new selection process, pursuant to clause 8 of this Charter.

7.4.2 Member from a Stakeholder Organisation who has not provided an alternate nominee:

7.4.2.1 the General Manager/CEO, in consultation with Councillors, will determine a replacement Stakeholder Organisation to nominate a member to the committee.

8 Selection of Members

8.1 The Facilitator will invite each of the Stakeholder Organisations listed in clauses 5.1.3 to 5.1.7 to nominate a representative(s) for membership of the Committee.

8.2 Councillor Representatives and/or Community Representatives will be those Members previously appointed to the Newcastle Cycling Working Party under the Terms of reference dated 31 May 2013. These are:

<table>
<thead>
<tr>
<th>Members</th>
<th>Councillor Therese Doyle</th>
<th>Dr Ben Ewald (Newcastle Cycleways Movement)</th>
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</thead>
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<tr>
<td></td>
<td>Councillor Jason Dunn</td>
<td>Sam Reich (Newcastle Cycleways Movement)</td>
</tr>
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<td></td>
<td>Councillor Brad Luke</td>
<td>Brenton Pobie (Community Member)</td>
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<td></td>
<td>Deborah Moore (Heart Foundation)</td>
<td>David Phelan (Community Member)</td>
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<td>Darrell Harris</td>
<td>Ken Saxby (RMS)</td>
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<td></td>
<td>Kathleen Straw (NPWS)</td>
<td>Megan Sharkey (University of Newcastle)</td>
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<tr>
<td></td>
<td>Bill Butler (RMS)</td>
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</table>

9 Responsibility of Members

9.1 Members are expected to:

9.1.1 understand the relevant legislative and regulatory requirements applicable to the Committee;

9.1.2 be able to contribute the time needed to understand the Committee’s business papers and to attend Committee meetings; and

9.1.3 provide advice and feedback on matters brought before the Committee pursuant to clause 4 of the Charter.

9.2 Appointments as Community Representatives to the Committee will:

9.2.1 seek to achieve a mix of skills to facilitate the sound functioning of the Committee; and
9.2.2 seek to have regard to representing the diversity and interests of the community.

10 Appointment and responsibility of Chairperson

10.1 Election of the Chairperson will take place at the first meeting of the Committee in each calendar year.

10.2 The Facilitator will administer all elections.

10.3 If there are more than two nominees for the Chairperson position, the nominee receiving the lowest number of votes will be eliminated and a further round of voting will take place to elect the Chairperson. This process will continue until a nominee is elected.

10.4 The Chairperson will be responsible for keeping order at the meeting.

10.5 If the Chairperson is absent from a Committee meeting, a Member of the Committee will be nominated by the Committee to chair the meeting.

11 Responsibility and requirements of Facilitator

11.1 The Facilitator will be a suitably qualified Council staff member. The position may be shared amongst a number of suitably qualified Council staff members.

11.2 The role of the Facilitator is to:

11.2.1 maintain the register of members;

11.2.2 make this Charter, Council’s code of conduct and appropriate council policies available, as required;

11.2.3 book meeting venues and organise the provision of any necessary equipment;

11.2.4 provide administrative assistance to the Chairperson;

11.2.5 ensure agendas, minutes and business papers are prepared and distributed within appropriate timeframes;

11.2.6 take minutes at committee meetings;

11.2.7 support the Chairperson in managing meetings and facilitating discussion; and

11.2.8 fulfil reporting requirements.

12 Attendance at meetings

12.1 Attendance at any meeting of the Committee is limited to the following:

12.1.1 Members; and

12.1.2 Attendees as provided at clause 6.

13 Quorum

13.1 A quorum is constituted by attendance of at least four Members.

13.2 If a quorum is not achieved, an informal meeting may be conducted at the discretion of the Chairperson.

14 Meeting schedule

14.1 The Committee will meet at least four times per year or as resolved by the Committee.
14.2 A forward meeting plan will be agreed by the Committee each year.
14.3 Additional meetings may be scheduled by the:
   14.3.1 Chairperson;
   14.3.2 Resolution of the Committee; or
   14.3.3 General Manager/CEO.

15 Meeting agendas
15.1 The Facilitator will provide notice of meetings, including the agenda and business papers, to Members at least seven business days prior to the day of the meeting. These may be transmitted electronically.

16 Resolutions of the Committee
16.1 Resolutions of the Committee must be consistent with this Charter and must only be recommendations.
16.2 The Committee is expected to make decisions by open vote and record its recommendations in the minutes of the Committee meeting.
16.3 The General Manager/CEO (or delegate) may action recommendations as they deem appropriate in accordance with their individual delegations and authorisations.
16.4 A report to Council for a decision will be required where recommendations fall outside the functions delegated to the General Manager/CEO.

17 Reports to Council
17.1 The Committee will report at least annually to Council. Such a report will be prepared by the Facilitator.
17.2 The Committee may submit reports to Council where a Council resolution is required to enact a recommendation of the Committee.
17.3 A Council staff member may prepare a report or provide reasonable assistance to the Committee member preparing the report and the Committee may, by resolution, determine to:
   17.3.1 adopt the report;
   17.3.2 call for expressions of interest from Members to prepare a report on the matter for submission to Council; or
   17.3.3 not adopt the report.
17.4 The Committee must provide all reports for Council to the General Manager/CEO and Facilitator to review and comment before submitting to Council. The Facilitator and General Manager/CEO may:
   17.4.1 provide a commentary note regarding the report, which must be annexed to the report; or
   17.4.2 decline to submit to Council, particularly if the report deals with outside of the scope of clause 4.
17.5 Councillor Representatives may present issues to Council by way of Notice of Motion in accordance with the provisions of the Code of Meeting Practice.
18 Minutes
18.1 All Committee business will be appropriately minuted and recorded by the Facilitator including registration, in accordance with Council’s Records Management Policy.
18.2 Draft minutes will be distributed to the Committee no later than 10 business days after the meeting.
18.3 Draft minutes of the previous meeting are to be adopted by resolution of the Committee at the following meeting. The Committee must then authorise the Committee Chairperson to sign the confirmed minutes.

19 Conduct by members and attendees
19.1 All Members and attendees are expected to conduct themselves in accordance with Council’s Code of Conduct.
19.2 Conflicts of Interests must be declared and managed in accordance with the Code of Conduct. A record of a declared conflict of interest in the minutes is sufficient.
19.3 Significant conflicts of interest must be managed by the Member excluding themselves from the meeting during the discussion of the relevant agenda item. Such exclusion should be recorded in the minutes.

20 Public Comment
20.1 The Lord Mayor/Administrator and General Manager/CEO are the official spokespeople for the Council, in accordance with Council’s Media Policy, and no Members should speak to the media or members of the public on behalf of Council.

21 Confidentiality
21.1 Prior to attending a meeting, Committee Members and other attendees at the meeting, must agree to abide by the terms of Council’s Code of Conduct relating to confidentiality.
21.2 Unless otherwise resolved by the Committee, all meetings of the Committee will be closed to the general public.

22 Induction
22.1 New Members will receive relevant information and briefings on their appointment to assist them to meet their Committee responsibilities.

23 Review of Charter
23.1 This Charter will be reviewed at the commencement of each Council term and may only be amended by resolution of the elected Council.
ITEM 22: NOM 13/12/16 - INCREASING DOG LEASH FREE AREAS INCLUDING ENCLOSED AREAS

COUNCILLORS: M OSBORNE AND T DOYLE

PURPOSE

The following Notice of Motion was received on 1 December 2016 from the abovementioned Councillors:

MOTION

That Council, as a priority:

1. Review the number of Dog Leash Free Areas across the city, with a focus on enclosed off leash areas and the aim to increase the number of designated areas to meet the growing demand.

2. Review the Sportsland Plan of Management, as part of the proposed new Community Land Plan of Management, to allow specific ovals to be used as time-restricted Dog Leash Free Areas (for example, sunrise to 9am, and 5pm to sunset), including regularising the arrangement that was recently in place at Connelly Park in Carrington.

3. Report back to the first meeting in 2017 (28th February) to place the proposed new Community Land Plan of Management on public exhibition, to outline the timeframe to roll out the new Dog Leash Free Areas (including enclosed areas) and to include any necessary expenditure in the 2017-18 Council Budget process.

BACKGROUND

Newcastle provides 17 off leash areas for dog exercise with 4 of these being time-restricted off leash areas (generally sunrise to 9am, and 5pm to sunset) and none of the areas are fenced.


By way of comparison, Lake Macquarie provides 29 off leash areas, with 10 being time restricted.


There has been an increase in Dog ownership in recent years, in particular ownership of rescued greyhounds following Premier Baird’s announcement of a ban of the racing industry and then his policy backflip. Rescued greyhounds particularly benefit from the socialisation with other dogs, for example, with other sight hounds.
For some time, owners of whippets, greyhounds and wolfhounds have been informally meeting before 9am at the enclosed area of Connelly Park in Carrington. This meeting has been stopped by Council rangers because the area is not a formally designated Dog Leash Free Area.

This multi-purpose use of Council’s facilities should be encouraged and formalised.

ATTACHMENTS

Nil.
SUBJECT: REPORT ON NOTICE OF MOTION - ITEM-22 NOM 13/12/16 - INCREASING DOG LEASH FREE AREAS INCLUDING ENCLOSED AREAS

REPORT BY: INFRASTRUCTURE

CONTACT: DIRECTOR INFRASTRUCTURE

DIRECTOR COMMENT

The review of off leash areas, including the provision of new sites, will need to be completed through a separate review of environmental factors (REF) process once the Community Land PoM is adopted. It is expected that this PoM will be available in draft form in April 2017. The dual use of sportsgrounds for off leash areas, is not recommended due to the incompatible use matters arising from past experiences. Investigations are being undertaken into providing an enclosed leash free area at the Tighes Hill off leash site. If deemed feasible, funding will need to be allocated to complete this project.

BACKGROUND

Newcastle Council provides 17 off leash areas across its geographical area of 214km² to service the population of an estimated 161,225. Lake Macquarie Council provides 29 off leash areas across its geographical area of 757km² to service its population of approximately 204,166. The Companion Animals Act 1998 stipulates each Council must provide at least one off leash area where dogs can be exercised off leash during certain hours.

Both the Companion Animals Act and Newcastle Council's guidelines for off leash areas requires that the carer of the dog should be capable of controlling the dog/s at all times when in an off leash area. An example of this is dogs responding to voice commands. Dogs that do not respond to carer's directions, and, for example, run onto surrounding roads, would not be considered to be in adequate control and therefore do not meet the requirements of utilising off leash areas.

Council rangers have in recent months been approaching people who are allowing dogs off leash in areas not designated as off leash, to stop utilising these areas and directing them to use only off leash areas. It appears this enforcement has resulted in a spike in the number of requests Council receives in regards to utilising sportsgrounds for off leash areas, and for off leash areas to be enclosed.

Currently, Council's off leash areas are incorporated into the Sportslands Plan of Management (PoM) and the Neighbourhood Parks PoM. Both of these PoMs are being reviewed along with the General Community Use PoM and will be combined into one Community Land PoM. Due to a number of reasons, including that PoMs are intended to be high level strategic documents and the difficulty and time consuming process of amending them due to changes in needs, the new Community Land PoM will no longer include specific off leash area sites. Instead, the PoM will determine what is appropriate use for each category of land (park, sportsground or general community use). The PoM
will state that the categories of park and general community could be appropriate for use as off leash areas, subject to a separate process to identify specific sites, however, the sportsground category is not to be used for off leash areas.

The core objectives for management of community land categorised as a sportsground as stipulated in s. 36F of the Local Government Act are:

(a) to encourage, promote and facilitate recreational pursuits in the community involving organised and informal sporting activities and games, and

(b) to ensure that such activities are managed having regard to any adverse impact on nearby residences.

There are currently seven sites within the Sportslands PoM that are designated off leash areas. Of these seven, four are distinctly separated from the sporting fields and associated amenities; one has not been used as a sportsground for over ten years; one still has a dual use as a sportsground and the final site at Tighes Hill is no longer utilised as a sportsground due to the incompatible use as both a sportsground and off leash area. This change at Tighes Hill occurred as a result of an off leash area being introduced and increasing in popularity. The cricket club refused to utilise the site due to health concerns arising from dog faeces constantly being left on the field. Historical evidence supports that sportsgrounds must be used according to the core objectives stated above and any ancillary uses must be complementary to this primary use.

Experience has identified that the dual use of sportsgrounds for sport and off leash areas is not complementary. It is intended in the new Community Land PoM that areas currently designated as off leash areas, that are separate from sporting fields, and also the Tighes Hill site, will be re-categorised as either park or general community use, to better reflect the actual use of those specific areas.

As previously advised through a Councillor Memo on 22 November 2016, it is anticipated that the new Community Land PoM will be available in draft form in April 2017. Once this PoM has gone through the required public exhibition process and has been adopted, Council will then be in a position to review off leash areas. A review of off leash areas will be required to be carried out through a review of environmental factors process (REF). This review would look at the suitability of current sites, potential new sites and assess the need for enclosed off leash areas. Due to the lengthy timeframes and extensive consultation required, as experienced by other Councils which have recently undertaken this review, and competition for internal resources, funding would be required for an external consultant to complete this project.

Council officers are currently investigating enclosing the off leash area at the Tighes Hill site. This site has high utilisation, a primary use as an off leash area and appears extremely viable. There is currently no funding allocated for this project and if the project is deemed feasible, then funding would be sought through a budget request process to enable to the provision of the fencing and associated infrastructure as soon as practicable.

**RECOMMENDATION**

Council notes that:
(a) A new Community Land PoM is under development and will be available in draft form in April 2017;

(b) Following adoption of the Community Land PoM, Council will conduct a review of dog off leash areas. This will involve undertaking an REF for each site; and

(c) A project to investigate fencing the off leash site in Tighes Hill, has commenced.