CITY OF NEWCASTLE

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 23 October 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

16 October 2018

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ITEM-19 CON 23/10/18 - SALE OF LAND FOR UNPAID RATES AND CHARGES

ITEM-20 CON 23/10/18 - SOUTH STOCKTON ACTIVE HUB SKATE PARK AND PLAYGROUND - CONTRACT NO. 2019/001T

ITEM-21 CON 23/10/18 - ORGANISATIONAL REDESIGN AND STRUCTURE IMPLEMENTATION UPDATE (DUE TO THE LIMITED DISTRIBUTION OF THE REPORT IT IS TO BE TABLED AT THE ORDINARY COUNCIL MEETING 23 OCTOBER 2018)

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 18 SEPTEMBER 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 180918 Public Voice Committee

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 18 September 2018 at 5.35pm.

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), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property and Interim Director Strategy and Engagement), F Leatham (Interim Director People and Culture), S Gately (Interim Director City Wide Services), E Kolatchew (Manager Legal), J Rigby (Manager Assets and Projects), P McCarthy (Interim Manager Regulatory and Assessment), J Vescio (Executive Officer, Chief Executive Office), 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/Webcasting).

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.

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

APOLOGIES
Nil.

DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS
The Lord Mayor called for declarations of pecuniary and non-pecuniary interests.

Councillor Church gave notice of a declaration he would make in relation to the Development Advisory Committee meeting.

PUBLIC VOICE SESSIONS

PROCEDURAL MOTION
Moved by Cr Mackenzie, seconded by Cr Church

Council authorise the video recording of Item 1 - Public Voice Committee for the purposes of filming for a documentary.

For the Motion: Councillors Mackenzie, Robinson, Elliott, Church and Luke.

Against the Motion: Lord Mayor, Cr Nelmes, Councillors Byrne, Dunn, Duncan, Winney-Baartz, Clausen, Rufo and White. 

Defeated
ITEM-1 PV 18/09/18 - MOORE STREET BIRMINGHAM GARDENS

Ms Joanne Rigby, Manager Assets and Projects, City of Newcastle outlined the proposed Moore Street Birmingham Gardens Village Centre Public Domain and Traffic Plan (PDP).

Mr George Merryman representing the Regal Cinema addressed Council and outlined objections to the proposed Moore Street Birmingham Gardens Village PDP.

A question from Councillor Duncan sought more information about areas of roadway, footpaths, pedestrian crossings and/or carparks that were currently considered illegal under Australian Standards and what that would mean liability wise to the City of Newcastle. The Manager Assets and Projects indicated she would take the question on notice.

The meeting concluded at 7.15pm
MINUTES - ORDINARY COUNCIL MEETING 25 SEPTEMBER 2018

RECOMMENDATION

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

ATTACHMENTS

Attachment A: 180925 Ordinary Council Meeting

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
PRESENT
The Lord Mayor (Councillor N Nelmes), Councillors M Byrne, J Church, D Clausen, C Duncan, J Dunn, K Elliott, J Mackenzie, A Robinson, A Rufo (retired 8.20pm), E White and P Winney-Baartz.

IN ATTENDANCE
J Bath (Chief Executive Officer), D Clarke (Director Governance), K Liddell (Director Infrastructure and Property and Interim Director Strategy and Engagement), F Leatham (Interim Director People and Culture), S Gately (Interim Director City Wide Services), E Kolatchew (Manager Legal), A Jones (Chief Financial Officer), P McCarthy (Interim Manager Regulatory and Assessment), L Morton (Art Gallery Director), R Maughan (Recreation Services Projects Coordinator), J Vescio (Executive Officer, Chief Executive Office), D Fischetti (Media Officer), C Field (Executive Officer, Lord Mayor's Office), M Murray (Policy Officer, Lord Mayor's Office), K Sullivan (Council Services/Minutes) and J Redriff (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.

PRESENTATION
The Freeman of the City Medal was presented to Mr Warren Smith, a former long serving City of Newcastle surf life guard and co-founder of Surfest and Mr Howard Mole for a lifetime of service to charity work. Councillors congratulated both recipients for their dedicated service and contribution to the City of Newcastle.

APOLOGIES

MOTION
Moved by Cr Clausen, seconded by Cr Mackenzie

The apologies submitted on behalf of Councillor Luke be received and leave of absence granted.

Carried
DECLARATIONS OF PECUNIARY AND NON-PECUNIARY INTERESTS

Councillor White
Councillor White declared a less than significant non pecuniary interest in Notice of Motion Item 26 - Newcastle Antipoverty Alliance Campaign to Increase the Newstart Allowance, however, she stated it presented a significant conflict of interest in terms of her employer and would leave the Chamber for discussion on the item.

CONFIRMATION OF PREVIOUS MINUTES

MINUTES - BRIEFING COMMITTEE 21 AUGUST 2018
MINUTES - ORDINARY COUNCIL MEETING 28 AUGUST 2018

MOTION
Moved by Cr Dunn, seconded by Cr White

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

LORD MAYORAL MINUTE

ITEM-15   LMM 25/09/18 - NEWCASTLE ART GALLERY EXPANSION WORKING PARTY

MOTION
Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1 Establishes a Newcastle Art Gallery Expansion Working Party, facilitated by the City of Newcastle, to sharpen the focus of efforts towards securing funding towards the expansion of the Newcastle Art Gallery. The Working Party will establish a City of Newcastle charter, and be comprised of Councillors and Council Officers, who may invite representatives from the NSW and Federal Governments, Stakeholder Organisations and the Community;

2 Prepares an updated business case for the expansion of the Newcastle Art Gallery, to compliment the work and advocacy of the Newcastle Art Gallery Expansion Working Party.

3. Endorses the nominations of the Lord Mayor, Cr Nelmes, and Councillors Duncan and Mackenzie to the Newcastle Art Gallery Expansion Working Party.

AMENDMENT
Moved by Cr Rufo, seconded by Cr Church

4. The updated business case be presented to Council for endorsement prior to submission to the State and Federal Governments. Defeated
The motion moved by the Lord Mayor, Cr Nelmes was put to the meeting. Carried unanimously

**ITEM-16 LMM 25/09/18 - NSW WASTE LEVY FUND**

**MOTION**
Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1 Notes that City of Newcastle ratepayers will contribute at least $23.5 million in Waste Levy contributions to the NSW Government this year, receiving a small fraction of this back in the form of grant funding to run environmental awareness campaigns;

2 Notes that over the past 10 years the NSW Government has increased the Waste Levy from $45 per tonne to $138 per tonne, an increase of over 300 per cent, and that the total Waste Levy paid by the ratepayers of the City of Newcastle over the past 10 years to the NSW Government is $178 million;

3 Notes the release of the NSW Legislative Council Portfolio Committee No. 6 – Planning and Environment report ‘Energy from waste’ technology (the Report), on matters relating to the waste disposal industry in New South Wales (Attachment 1);

4 Notes that Recommendation 4 of the ‘Energy from Waste’ technology report states that “the NSW Government hypothecate 100 per cent of the waste levy funds contributed by local councils back to these organisations to provide waste management services, including waste reduction, avoidance and re-use programs, and environmental programs to encourage the development of innovative waste management technology.”;

5 Writes to the NSW Minister for the Environment, the Hon. Gabrielle Upton MP calling on the Minister to accept and implement Recommendation 4 of the Report and sends a copy of this correspondence to the NSW Shadow Minister for the Environment, the Hon. Penny Sharpe MLC. Carried unanimously

**ITEM-17 LMM 25/09/18 - LAUNCH OF THE GREATER NEWCASTLE METROPOLITAN PLAN**

**MOTION**
Moved by Lord Mayor, Cr Nelmes

That the City of Newcastle

**Part A:**

1 Welcomes the release of the Greater Newcastle Metropolitan Plan (Plan), which was launched on 17 September 2018 by the Minister for Planning the Hon. Anthony Roberts MP, with the five Mayors from the Greater Newcastle Metropolitan Local Government Areas (LGAs);
2 Commends the Department of Planning and Environment who have worked collaboratively with the five greater metropolitan Local Government Areas (LGAs), to produce the Plan, as the key blueprint to co-ordinate planned growth and investment for the Greater Newcastle Metropolitan area;

3 Collaborates with our partners from the five Greater Newcastle Metropolitan LGAs, the State and Federal Governments, as well as government and non-government agency partners and the community toward the implementation of the Plan.

4 Note the inclusions on the Greater Newcastle Metropolitan Plan of the City of Newcastle vision outlined in our 2030 Community Strategic Plan and our local planning strategy that sets out our shared plan to create a smart, livable and sustainable city in concert with United Nations New Urban Agenda (NUA) and the Sustainable Development Goals adopted by both our National Government and the City of Newcastle.

5 Writes to the Minister advocating the advantages and opportunity to include the SDGs as part this Greater Newcastle Metropolitan Plan recognising Newcastle’s status as United Nations City and the important collaboration with University of Newcastle.

Part B:

1 Notes that under the heading “Delivering strong leadership to shape Greater Newcastle”, it is stated that “Metropolitan cities succeed and perform best when all tiers of government collaborate and work together with business, industry and the community to deliver a shared vision for their city”;

2 Notes that the Hunter Joint Organisation has constituted a Greater Newcastle standing committee tasked with the delivery and implementation of this plan and supports this governance model to work in collaboration with State and Federal Government together with industry and our local communities.

3 Does not support a governance model inclusive of adhoc groups that do not have inclusive or open and transparent governance models like the newly established Committee for the Hunter that precludes representation from any of the five Greater Metropolitan LGAs, despite the above statement in Part B (1);

4 Notes that the proposed Committee for the Hunter lacks the adequate governance oversight and expertise required to appropriately advise on metropolitan-scale collaboration between community, industry and government;

5 Writes to the NSW Planning Minister to review the proposed governance arrangements for the oversight and implementation of the Greater Newcastle Metropolitan Plan, to ensure that the envisioned collaborative partnerships model, as outlined in the Newcastle Greater Metropolitan Plan (p.14) is achieved.

6 Notes the importance of the integration of land-use and transport planning and calls on the release of the Greater Newcastle Future Transport plan, currently in draft that supports this document. Noting the strong and consistent advocacy by the City of Newcastle ensuring that this document was a key deliverable of the State Government during the rail corridor rezoning decision.
7 Notes there is a policy disconnect between the State Governments department of Premier and Cabinets recently released twenty year economic vision for regional NSW and the Department of Planning's Greater Newcastle Metropolitan Plan and seeks rectification of these inconsistencies' by both agencies and the requisite Ministers.

PROCEDURAL MOTION
Moved by Cr Elliott, seconded by Cr Church

The Lord Mayoral Minute lay on the table to allow Councillors sufficient time to discuss the matter and receive a briefing from the State Government. Defeated

The motion moved by the Lord Mayor, Cr Nelmes was put to the meeting.

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

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

ITEM-18 LMM 25/09/18 - ARTS AND CULTURAL FESTIVALS IN NEWCASTLE

MOTION
Moved by Lord Mayor, Cr Nelmes

That City of Newcastle:

1 Notes that the iconic This Is Not Art (TiNA) Festival returns to Newcastle this Thursday, thanks to the $100,000 grant and continued support from the City of Newcastle;

2 Notes that our Community Strategic Plan 2030 outlines Vibrant, Safe and Active Public Places, with City of Newcastle leading the support, planning and delivery of cultural and community programs, events and live music, as key to our vision of Newcastle as a smart, liveable and sustainable global city;

3 Recognises the growth in requests for support from the City of Newcastle to assist in the delivery of arts and cultural festivals and events throughout Newcastle;

4 Support the facilitation and co-ordination of arts and cultural festivals and events throughout Newcastle, including, but not limited to, the Newcastle Fringe Festival, and the proposed Newcastle City Festival; aimed at supporting such events in line with our strategic vision to foster a prosperous, diverse and resilient economy by facilitating events and festivals that attract visitors and support local economic development (City of Newcastle 2018/19 Budget);

5 Develops a strategic framework to facilitate the partnering of Novocastrian arts and cultural businesses with emerging and existing events throughout Newcastle;
6 Reports back to Council after engagement with current Arts and Cultural Festival organisers, including, but not limited to, Newcastle Fringe, Proposed Newcastle City Festival, TiNA, the Newcastle Writers Festival, Newcastle Comedy Festival, regarding the development of this strategic framework partnership model.

Carried unanimously

REPORTS BY COUNCIL OFFICERS

ITEM-88 CCL 25/09/18 - NEWCASTLE AIRPORT PTY LIMITED - APPOINTMENT OF COUNCIL’S SHAREHOLDER REPRESENTATIVES

MOTION

Moved by Cr Elliott, seconded by Cr Mackenzie

1 In accordance with section 250D of the Corporations Act 2001 (Cth) and clauses 1.1 and 1.2(c) of the Constitution of Newcastle Airport Pty Ltd (NAPL), Council, in its capacity as one of the two shareholders of Newcastle Airport Pty Ltd, resolves to appointment Shareholder Representatives as follows:

i) Nuatali Nelmes, Lord Mayor of City of Newcastle, and

ii) Jeremy Bath, Chief Executive Officer of City of Newcastle.

2 In accordance with Clause 400(4) of the Local Government (General) Regulation 2015 (NSW), Council approves and authorises Council’s seal to be affixed to the Appointment of Shareholder Representative form on the grounds that such appointment relates to the business of CN.

Carried unanimously

ITEM-89 CCL 25/09/18 - ADOPTION OF OUTDOOR TRADING POLICY

MOTION

Moved by Cr Elliott, seconded by Cr White

Council adopts the draft Outdoor Trading Policy (Attachment A).

Carried unanimously
ITEM-90  CCL 25/09/18 - EXHIBITION OF DRAFT LOCAL APPROVALS - MOBILE FOOD VENDING VEHICLES POLICY

MOTION
Moved by Cr White, seconded by Cr Duncan

Council places the Draft Local Approvals - Mobile Food Vending Vehicles Policy on public exhibition for 42 days (as at Attachment A).  
Carried unanimously

ITEM-91  CCL 25/09/18 - PUBLIC EXHIBITION OF DRAFT COMMUNITY ENGAGEMENT POLICY

MOTION
Moved by Cr Rufo, seconded by Cr Elliott

Council places the draft Community Engagement Policy as at Attachment A on public exhibition for the period Friday 28 September 2018 to Friday 26 October 2018.  
Carried unanimously

ITEM-95  CCL 25/09/18 - GLEBE ROAD, ADAMSTOWN - PROPOSED TRAFFIC CHANGES AT PARK AVENUE, WOOD STREET AND COURT STREET

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

Approve the proposed traffic plan as shown at Attachment A, including construction of a median on Glebe Road at Wood Street, Adamstown and construction of a continuous footpath treatment at the proposed cul-de-sac on Court Street.  
Carried

ITEM-96  CCL 25/09/18 - REVIEW OF S.355 COMMITTEES

MOTION
Moved by Cr White, seconded by Cr Mackenzie

1 That Council approves the dissolution of the following Section 355 Committees (s.355) listed below:
   i) Beresfield Community Children's Education Centre
   ii) Elermore Vale Committee Reserve Committee
   iii) Federal Park Committee
iv) Myamblah Crescent Oval Committee and Local Parks Committee

v) Tuxford Park Local Committee

vi) New Lambton Community Centre Committee

2 That CN approves to work with the s.355 Committees to ensure all obligations are fulfilled.

3 A report be brought back to Council in 12 months updating the Council on the governance of the s.355 Committees.

4 The CN acknowledges the work of all previous Committee's for their assistance and hard work over the previous years.

Carried unanimously

ITEM-86 CCL 25/09/18 - EXECUTIVE MONTHLY PERFORMANCE REPORT

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

The Executive Monthly Performance Report for August 2018 be received.

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

Against the Motion: Nil.

Carried

ITEM-87 CCL 25/09/18 - ANNUAL FINANCIAL REPORTING FRAMEWORK

MOTION
Moved by Cr Clausen, seconded by Cr Dunn

Council adopts the annual financial reporting framework, comprising the following for each financial year:

i) An executive monthly performance report for July to May no later than one month after the month being reported.

ii) A quarterly budget review statement for September, December and March no later than two months after the end of each quarter.

iii) A preliminary end of year financial position in August.
iv) Audited annual financial statements in October.

**AMENDMENT**
Moved by Cr Mackenzie, seconded by Cr Church

i) An executive monthly performance report for each month no later than one month after the month being reported.  

**Defeated**

The motion moved by Councillor Clausen and seconded by Councillor Dunn was put to the meeting.

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

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

**Carried**

**ITEM-92 CCL 25/09/18 - ADOPTION OF REVISED MEDIA POLICY**

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

Council adopts the revised Media Policy as at Attachment A.  

**Carried**

**ITEM-93 CCL 25/09/18 - CITIES LEADERSHIP INSTITUTE US AND CANADA TOUR PROGRAM 2018 - PARTICIPATION BY CITY OF NEWCASTLE**

**PART 1**

**MOTION**
Moved by Cr Mackenzie, seconded by Cr Clausen

Council votes on the recommendations in seriatim.  

**Carried**

**PART 2**

**MOTION**
Moved by Cr Mackenzie, seconded by Cr Clausen


**Carried**
PART 3

MOTION
Moved by Cr Mackenzie, seconded by Cr White

Council endorses the attendance of Councillor Duncan on the Cities Leadership Institute US Health and Innovation Tour 2018. Carried

ITEM-94 CCL 25/09/18 - BRUNKER ROAD, ADAMSTOWN - UPGRADE OF EXISTING PEDESTRIAN CROSSING

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

Approve the proposed upgrade of the existing children's pedestrian crossing on Brunker Road near Mandalong Road, Adamstown as shown at Attachment A. Carried unanimously

ITEM-97 CCL 25/09/18 - OUTDOOR EXERCISE FACILITY PLAN

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

The draft CN Outdoor Exercise Facility Plan be adopted. Carried

NOTICES OF MOTION

ITEM-23 NOM 25/09/18 - NEWCASTLE NIGHT MAYOR

MOTION
Moved by Cr Mackenzie, seconded by Cr Robinson

That City of Newcastle receive a costed proposal to create a position of Night Mayor/Night Tsar for the City of Newcastle, as a complement to the After Dark Strategy and the Live Music Strategy. Carried

ITEM-24 NOM 25/09/18 - GLYPHOSATE AND WEED MANAGEMENT REVIEW

Councillor Mackenzie stated that he wished to move an alternate motion to the Notice of Motion printed in the business papers.
ORIGINAL MOTION

The City of Newcastle

- Notes renewed health and safety concerns about the use of glyphosate for weed management, following a $US289 million damages claim against Monsanto in August 2018.
- Notes that the City currently uses the glyphosate-based herbicide Roundup for weed control across the local government area, including in park and road maintenance, heavily trafficked areas and within our stormwater catchments.
- Conduct a review of City of Newcastle’s weed management plan, including trials of non-chemical methods, to investigate alternative weed control methods that will minimise or eliminate the use of glyphosate or glyphosate-based products, with particular regard to foliar spraying and herbicide use in riparian areas.

ALTERNATE MOTION

MOTION

Moved by Cr Mackenzie, seconded by Lord Mayor, Cr Nelmes

That City of Newcastle

- Notes renewed health and safety concerns about the use of glyphosate for weed management, following a $US289 million damages claim against Monsanto in August 2018.
- Notes that the City currently uses the glyphosate-based herbicide Roundup for weed control across the local government area, including in park and road maintenance, heavily trafficked areas and within our stormwater catchments.
- Provide a leading practice review of the use of glyphosate or glyphosate-based products in relation to:
  - Work health and safety in use, handling, transport and storage
  - Weed management.

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

Against the Motion: Councillor Church.

Carried
ITEM-25 NOM 25/09/18 - 'HOLD MY HAND' ROAD SAFETY AWARENESS SIGNAGE CAMPAIGN

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

That Newcastle City Council:

- Acknowledges the loss and devastation to families caused by road and pedestrian accidents and fatalities in the Newcastle region, across NSW and Australia.
- Acknowledges that during the upcoming summer school holidays following the Newcastle 500 Supercars event, the tourist community of Newcastle will grow exponentially and this underscores the critical importance of child pedestrian safety.
- Acknowledges our previous collaborative relationship with the Little Blue Dinosaur Foundation ("LBDF") in creating a safer environment for children and families during the school holidays through community education and awareness campaigns in 2015 and 2017.
- Commits funding a road safety awareness signage campaign with the LBDF in 2018 commencing mid-November prior to the commencement of the Newcastle 500 Supercars event and finishing at the end of the January school holiday period where the risk for serious accidents due to increased traffic and pedestrian activity intensifies.
- Consults with the LBDF and Newcastle City Traffic Committee to determine the number, product type (i.e. core flutes, banners, noticeboard inserts) and location (i.e. key tourist hot spots and thoroughfares) for placement of LBDF safety awareness signage across the local government area.

Carried unanimously

ITEM-26 NOM 25/09/18 - NEWCASTLE ANTIPOVERTY ALLIANCE CAMPAIGN TO INCREASE THE NEWSTART ALLOWANCE

Councillor White left the Chamber for the determination of the item.

MOTION
Moved by Cr Byrne, seconded by Cr Clausen

That Newcastle City Council

- Acknowledge the significant social and personal harm cause by unemployment - humiliation, exclusion, financial hardship, and poverty, deterioration in health outcomes and escalation in crime.
- Publicly endorses the Newcastle Anti-Poverty Alliance Campaign to increase the Newstart allowance. This campaign is being coordinated by the Australian Unemployed Workers Union.
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• Writes to Prime Minister, the Honourable Scott Morrison and the Leader of the Opposition, the Honourable Bill Shorten seeking their commitment to increasing the Newstart allowance to the level of the Henderson Poverty Line.

  Carried unanimously

Councillor White returned to the Chamber at the conclusion of the item.

CONFIDENTIAL REPORTS

PROCEDURAL MOTION
Moved by Cr Mackenzie, seconded by Cr Duncan

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

  Carried

Council moved into confidential session at 8.20pm.

Councillor Rufo was absent from the Chamber for confidential session and did not return to the meeting.

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

Council move back into open session.

  Carried

Council reconvened at 8.30pm and the Chief Executive Officer reported the resolutions of confidential session.

ITEM-18 CON 25/09/18 - MITCHELL PARK MEREWETHER CLARKE STAND UPGRADE WORKS - CONTRACT NO: 2019/002T

MOTION
Moved by Cr Elliott, seconded by Cr Mackenzie

1 Council accept the tender of Kingston Building Pty Ltd in the amount of $1,567,641 (excluding GST) for the Mitchell Park Merewether Clarke Stand upgrade works for Contract No. 2019/002T.

2 This confidential report relating to the matters specified in s10A(2)(d) of the Local Government Act 1993 be treated as confidential and remain confidential until Council determines otherwise.

  Carried unanimously

The meeting concluded at 8.32pm.
PURPOSE

To report on City of Newcastle’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 September 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 September 2018 be received.

KEY ISSUES

2 At the end of September 2018 the consolidated YTD actual operating position is a surplus of $9.6m which represents a positive variance of $4m against the budgeted YTD surplus of $5.6m. 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 $6.5.

3 The net funds generated as at the end of September 2018 is a surplus of $12.6m (after capital revenues, expenditure and loan principal repayments). This is a positive variance to the YTD budgeted surplus of $6.9m. This is primarily due to a timing variance in the delivery of City of Newcastle’s (CN) 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 CN’s temporary surplus funds are invested consistent with CN’s Investment Policy, Investment Strategy, the Act and Regulations. Details of all CN 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 September 2018 is provided in the Executive Monthly Performance Report.
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) CN’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 CN’s financial performance on a monthly basis.

10 At the Ordinary Council Meeting held on 25 September 2018 Council resolved to adopt the annual financial reporting framework for each financial year.

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 - September 2018
Distributed under separate cover
ITEM-99  CCL 23/10/18 - ADOPTION OF 2017/18 ANNUAL FINANCIAL STATEMENTS

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

PURPOSE

In accordance with the provisions of Sections 418 and 419 of the Local Government Act 1993 (as amended), City of Newcastle’s Audited Annual Financial Statements in respect of the year ended 30 June 2018 (Financial Statements) are tabled for presentation to Council.

RECOMMENDATION

1 Council receives and adopts City of Newcastle’s (CN) Financial Statements and accompanying notes, in respect of the year ended 30 June 2018, together with the Auditor's Report (Attachment A).

KEY ISSUES

2 CN’s external Audit Report for 2017/18 is unqualified. That is, that the financial statements present fairly CN’s operating result and financial position for declared business activities for the 2017/18 financial year.

3 CN's financial position as at 30 June 2018 shows sound liquidity with net assets of $1,631m.

4 CN’s operating result (before grants and contributions for capital purposes) for 2017/18 was a surplus of $1.1m against a $2.9m surplus in 2016/17.

5 Total Revenue was $310.4m or $21.5m higher compared to 2017 actual revenue. The primary factors are the 2015 Special Rate Variation (SRV) (large contributor to the $11.0m increase in rates and annual charges), increase in income for tipping fees at Summerhill of $8.2m, increase in Newcastle Airport income of $1.0m, recovery of funds from NSW Government – Justice Office of Emergency Management (JOEM) natural disaster claim of $0.9m and an increase in Roads and Maritime Services (RMS) income of $0.8m. These were partially offset by a decrease in operating grants and contributions of $5.5m most notably as a result of a decrease in the financial assistance grant of $4.7m due to receiving a payment in advance in the 2016/17 year.

6 CN received $23.6m in grants and contributions for capital purposes in 2017/18 compared to $21.4m in the prior year. The operating result, including these grants and contributions resulted in community equity increasing by $24.7m in 2017/18 compared to an increase of $24.3m in 2016/17.
Total operating expenditure was $285.7m or $21.1m higher than the 2016/17 actual expense. This was largely due to additional expenses for materials and contracts and other expenses. Primary factors include a significant increase in operating expenditure associated with infrastructure projects of $13.1m ($33.3m was expensed in 2018 v $20.1m in 2016/17) and a $6.2m increase in waste levy charges (largely driven by an increase in tonnages and the waste levy from $135.70 to $138.20 per tonne).

CN delivered a record level of works in 2017/18 across the Newcastle Local Government Area (LGA). The actual value delivered inclusive of capital and operational expenditure was $91.5m compared to the adopted budget of $90.3m. This level of spend is an increase of $4.8m or 5% above the value of work delivered in 2016/17. The focus of the program was CN's infrastructure assets with $30.0m spent on buildings, $28.1m spent on roads and $8.0m on stormwater. Other key initiatives saw CN invest $5.7m in transforming Newcastle into a Smart City and $3.0m into the replacement of CN's plant and fleet assets.

Through prudent and rigorous financial management, CN has delivered a net operating result of $1.07m. This exceeds the revised budget forecast of $0.4m adopted by CN as part of the March Quarterly Review on 22 May 2018 by $0.7m. CN also continued to maintain its focus on financial sustainability by maintaining a net operating surplus whilst renewing and maintaining assets and achieving key sustainability targets within agreed timeframes.

CN continues to build its reserves position to support future commitments as well as expanding the capital works program to target asset renewal and the infrastructure backlog. To help assess CN's progress towards these goals CN reviews whether its operational expenditure is sustainable based on recurring revenue for operational purposes being sufficient.

CN remains financially sustainable by achieving a net operating surplus of $1.07m for 2017/18.

The net operating surplus for 2017/18 has contributed to an increase in CN's total equity of $1,631m.

FINANCIAL IMPACT

Operating Result

The operating result for 2017/18 is calculated on a full accruals basis which means that all costs / income which relate to the current financial year are included irrespective of whether a cash inflow / outflow has been made or not.
14 To facilitate comparison, the Income Statement from the Financial Statements is reformatted and summarised below:

<table>
<thead>
<tr>
<th>Line No</th>
<th>Description</th>
<th>2017/18 ($'000) Actual</th>
<th>2016/17 ($'000) Actual</th>
</tr>
</thead>
<tbody>
<tr>
<td>i)</td>
<td>Operating Income before Capital Amounts</td>
<td>286,802</td>
<td>267,564</td>
</tr>
<tr>
<td>ii)</td>
<td>Operating Expenditure before Depreciation</td>
<td>(243,591)</td>
<td>(222,372)</td>
</tr>
<tr>
<td>iii)</td>
<td>Operating Result before Depreciation / Capital Amounts</td>
<td>43,211</td>
<td>45,192</td>
</tr>
<tr>
<td>iv)</td>
<td>Depreciation</td>
<td>(42,134)</td>
<td>(42,252)</td>
</tr>
<tr>
<td>v)</td>
<td>Operating Surplus / (Deficit) before Capital Amounts</td>
<td>1,077</td>
<td>2,940</td>
</tr>
<tr>
<td>vi)</td>
<td>Capital Amounts (Grants and Contributions)</td>
<td>23,596</td>
<td>21,371</td>
</tr>
<tr>
<td>vii)</td>
<td>Net Operating Result for the Year (as reported in the Income Statement)</td>
<td>24,673</td>
<td>24,311</td>
</tr>
</tbody>
</table>

15 Analysis of the movement of individual line items from the table above are:

**Line (i): Operating income before capital amounts**

16 Represents an increase of $19.2m on the 2016/17 revenue. Rates and annual charges income increased by $11.0m arising from the Independent Pricing and Regulatory Tribunal (IPART) approved rate increase of 1.5% and SRV of 6.5%. User charges and fees has increased by $10.6m largely due to tipping fees at Summerhill of $8.2m and increase in Newcastle Airport income of $1.0m. Other income is up due to recovery of funds from JOEM natural disaster claim for the April 2015 storm event for $0.9m, sale of inventories at Civic sites has increased by $0.6m, fines have increased by $0.5m, insurance recoveries up by $0.3m.

**Line (ii): Operating expenditure before depreciation**

17 The 2017/18 operational expenditure represents an increase of $21.2m on the 2016/17 result. This was largely due to additional expenses for materials and contracts and other expenses that in many cases had been budgeted to be capitalised. Other operating expenses consist of increases to the NSW Government waste levy of $6.2m as a result of tipping fees, increase CN's share in the operating expenses of Newcastle Airport $0.9m, and increases in electricity $0.3m, and street lighting $0.5m.

**Line (iii): Operating result before depreciation / capital amounts**

18 This line reflects the operating result for the year, prior to allowing for depreciation and shows a decrease of approximately $2.0m on the equivalent 2016/17 result. This was due to an increase in income of $19.2m as outlined in paragraph 16 and an increase in expenditure of $21.2m as outlined in paragraph 17.
Line (iv): Depreciation

19 Infrastructure depreciation continues to have a significant impact on the operating result, although decreasing slightly by $0.1m on the prior year. Under the Office of Local Government and Accounting Standard requirements, CN is required to revalue its infrastructure, property, plant and equipment every five years. It is important to note that depreciation variations may occur in future reporting periods due to this revaluation regime.

Line (v): Operating surplus / (deficit) before capital amounts

20 CN’s operating result before capital amounts shows an operating surplus of $1.1m, this is a decrease of $1.9m from 2016/17.

Line (vi): Capital grants and contributions

21 In the 2017/18 year, capital grants and contributions has increased by $2.2m. The major increase is attributable to CN’s smart city initiative of $4.5m grant. This is offset by reductions in s7.11 and s7.12 (previously s94 and s94A) contributions of $4.7m and a reduction in roads and drainage contributions of $0.6m.

Line (vii): Net operating result for the year (as reported in the Income Statement)

22 This represents the net impact of all of the above line items. This amount is transferred to retained earnings and reflects an increase in Net Assets. The net operating result of $24.7m is an increase of $0.4m against the 2016/17 net operating result of $24.3m.

Budget to actual comparison (Page 3 of the financial statements)

23 The budget disclosed in the income statement on page 3 of the financial statements is the original budget as detailed in the 2017/18 Operational Plan adopted at the Ordinary Council Meeting held on 27 June 2017. It does not include the budgets for capital work in progress carried forward from 2016/17 or any other budget adjustments approved by Council at the quarterly budget reviews during 2017/18. The actual result shows a net surplus of $1.1m against an original budget surplus of $4.8m.

24 The explanation of the key variances between actual and budget results is as follows:

i) Materials and contracts expenditure related to infrastructure projects exceeded budget by $20.9m primarily due to increased maintenance and capital works and expense of project related works as outlined in paragraph 7 above.
ii) User fees and charges achieved higher than budgeted revenue through user charges across a number of facilities of $14.6m. The major drivers of the variance are: tipping fees at the Summerhill Waste Management Centre $9.5m, revenue at the Newcastle Airport $1.5m, higher than expected work on Transport for NSW contracts $1.7m and higher parking fees $1m.

ii) Capital grants and contributions additional asset donations of $11.7m including art gallery $4.8m, roads $4.0m, recreation assets of $4.5m.

iv) Other expenses exceeded budget by $9.0m, driven by a higher NSW Government state waste levy $7.9m which is offset by higher revenues.

A high level analysis of material budget variations (above 10%) is shown in Note 21 of the Financial Statements.

Financial Performance Measures

Note 25(a) on Page 79 of the Financial Statements details CN's key financial performance measures. Key variances are discussed below.

Operating Performance Ratio 1.68%

This ratio measures a Council’s achievement of containing operating expenditure within operating revenue. It is important to distinguish that this ratio focuses on operating performance. Capital grants and contributions, fair value adjustments, net gains or losses on sale of assets, net shares of interests in joint venture and associates. The reversal of revaluation decrements are excluded. The benchmark is greater than 0%. Accordingly CN’s performance in 2017/18 is above the benchmark ratio.

Own source operating revenue ratio 86.47%

This ratio measures fiscal flexibility and the degree of reliance on external funding sources such as operating grants and contributions. CN's financial flexibility improves the higher the level of its own source revenue. The benchmark is greater than 60% and CN has exceeded this benchmark.

Unrestricted current ratio 2.76x

The unrestricted current ratio measures CN's ability to meet its obligations (current liabilities) using current assets. The benchmark is greater than 1.5x and CN has exceeded this benchmark.

Debt service cover ratio 7.36x

This ratio measures the availability of operating cash to service debt including interest, principal and lease payments. The benchmark is greater than 2x and CN has exceeded this benchmark.
Rates and annual charges outstanding ratio 2.74%

31 This ratio assesses the impact of uncollected rates and annual charges on liquidity and the adequacy of recovery efforts. The rates and annual charges outstanding ratio of 2.74% has decreased from 4.16% in 2016/17. This result is due to the proactive approach with CN's mercantile agent. The benchmark is less than 10% (for Councils classified as regional and rural) and CN has achieved this benchmark.

Cash expense cover ratio 7.11 months

32 This liquidity ratio indicates the number of months a Council can continue paying for its immediate expenses without additional cash inflow. The benchmark is greater than three months and CN has exceeded this benchmark.

33 Special Schedule No. 7 covers another important area in the assessment of financial sustainability. The schedule addresses the condition of public works and the estimated cost to bring assets up to a satisfactory standard.

34 The cost to bring assets to an agreed service level as set by CN has decreased from $100.2m to $95.5m over the last financial year.

35 The 2015 approved SRV will continue to provide the additional revenue necessary to fund the increased capital expenditure until the backlog is reduced to a sustainable position. This situation is highlighted in the ratios noted below.

Infrastructure asset performance indicators

36 Special Schedule 7 Page 9 of the Special Schedules details CN's consolidated ratios. Key ratios are discussed below.

Building and infrastructure renewals ratio (including WIP) 92.28%

37 This ratio compares the proportion spent on infrastructure asset renewals and the asset’s deterioration measured by its accounting depreciation. Asset renewal represents the replacement or refurbishment of existing assets to an equivalent capacity or performance as opposed the acquisition of new assets or the refurbishment of old assets that increase capacity or performance. As noted above CN has continued to make asset renewal a focus of the capital works program in 2017/18. NSW TCorp benchmark is greater than 100%.

Infrastructure backlog ratio 10.95%

38 This ratio shows the estimated cost to bring CN's infrastructure assets to a satisfactory standard compared to the total written down value of CN’s infrastructure. NSW TCorp benchmark is less than 2%.

Asset maintenance ratio 94.99%

39 This ratio compares actual versus required annual asset maintenance, as detailed in Special Schedule 7. A ratio of above 100% indicates that the Council is investing enough funds within the year to stop the infrastructure backlog from growing. NSW TCorp benchmark is greater than 100%.
Cost to bring assets to agreed service level ratio 5.45%

40 This ratio shows what proportion the value of the backlog is compared to the total replacement cost of CN’s infrastructure. NSW TCorp has no benchmark for this ratio.

41 CN continues to make progress towards each of the infrastructure ratios. A sustained maintenance and renewal program will reduce the backlog measures towards the benchmarks over time.

Financial Performance Measures

42 The Audit and Risk Committee has continued to be proactive in reviewing CN’s financial position and commitment towards financial sustainability and supported Treasury Corporation NSW’s (TCorp) Financial Assessment and Benchmarking Report (October 2012) on CN’s financial health.

43 At that time (October 2012), the independent members of the Audit Committee stated that:

   i)     CN’s future financial position was deteriorating and unsustainable.

   ii)    The situation required immediate and decisive action.

   iii)   Decisions must be made based on current, reliable, independently tested information and be free from political influence.

   iv)    CN needed to avoid the projected ongoing future financial difficulties. Significant progress has been made on CN's primary financial objective of achieving "financial sustainability".

44 Ensuring CN reached a position of financial sustainability has remained a priority. The audited financial results for 30 June 2018 show that CN has achieved a net operating surplus.

45 The 30 June 2018 net operating surplus is recorded at $1.1m.

46 CN continues to prudently manage its long term financial sustainability.

47 These results can be evidenced by the trends in CN's Income Statement and Statement of Financial Position for 2017/18.
48 CN’s trend towards achieving an operating surplus reflects the significant program of initiatives that CN has achieved to manage its long term financial sustainability. Prudent financial management has produced a net operating Surplus for 30 June 2018.

49 CN’s income from operating activities (excluding capital grants and contributions) represents an increase of $19.2m (or approximately 7.2%) from 30 June 2017. This is primarily driven by rates and annual charge and user charges and fees.
Operating expenditure represents an increase of $21.1m on the 2017 result. This is primarily driven by materials and contracts and other expenses.

CN's employee benefits and on-cost have remained broadly in line with prior year expenses during 2018 whilst providing for the annual increase of 2.35% in Award based pay entitlements.

**Balance Sheet**
52 CN’s cash levels (net of borrowing activity) have remained relatively constant during 2018.

53 CN's operating result has translated to an increase in equity. The accumulated surplus has increased by the net operating surplus for 30 June 2018.

54 CN's asset revaluations reserves have also increased significantly as a result of the revaluation of the operational land and buildings portfolios.

COMMUNITY STRATEGIC PLAN ALIGNMENT

55 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

56 The Financial Statements reflect the outcomes of actions, activities and projects contained in the 2017/18 Operational Plan and subsequent Quarterly Reviews which have been approved by Council.

RISK ASSESSMENT AND MITIGATION

57 Risk and mitigation of such risk is achieved through:

i) Development and oversight of the 2017/18 Operational Plan and subsequent Quarterly Reviews which have been approved by Council in accordance with the Local Government Act 1993.

ii) The Local Government Act 1993 (as amended) requires the Financial Statements to be externally audited. This audit was completed by the NSW Audit Office, who has issued an Unqualified Audit opinion for the 2017/18 financial year.

iii) The Audit Office of New South Wales presented a Client Service report to CN's Audit and Risk Committee on 11 October 2018. The Audit Office presented the financial statements to Council during a workshop on 16 October 2018.
58 The actual revenue and expenditure classifications and movements in assets and liabilities detailed in the Financial Statements are the outcomes of the strategic actions, activities and projects contained in the 2017/18 Operational Plan. These actions, activities and projects contributed to the delivery of CN’s social, environmental and economic objectives consistent with the Newcastle 2030 Community Strategic Plan.

59 Council resolved at the Ordinary Council Meeting held on 28 August 2018 to note the 2017/18 financial statements were being prepared and audited and authorised the Lord Mayor, a Councillor, the Chief Executive Officer and the Responsible Accounting Officer to sign the relevant statements at the conclusion of the audit.

60 CN’s Audit & Risk Committee was briefed by the Director, Financial Audit, The Audit Office of New South Wales on 11 October 2018. A presentation on the financial statements was held during a workshop to Council on 16 October 2018 by CN Management with Director, Financial Audit, The Audit Office of New South Wales.

61 In accordance with the provisions of s.418, of the Local Government Act 1993 (as amended), public notice of the Council meeting date at which the CN's Financial Statements will be presented was advertised in The Newcastle Herald on 16 October 2018.

62 Copies of CN's Financial Statements, together with the Auditor’s Report, were available for inspection by members of the public from 16 October 2018 to 5pm on 23 October 2018 at the Customer Enquiry Centre of the City Administration Centre. Written submissions can be lodged by 5pm close of business on 23 October 2018.

63 Following presentation of the Financial Statements to Council, copies will be available from the City Administration Centre or on CN's website.

64 CN's Financial Statements in respect of the year ended 30 June 2018 have been prepared in accordance with:

i) The Local Government Act 1993 (as amended) and the Local Government (General) Regulations 2005;

ii) Australian Accounting Standards and professional pronouncements;

iii) The Local Government Code of Accounting Practice and Financial Reporting (Guidelines); and

OPTIONS

Option 1

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

Option 2

66 Council resolves not to receive and adopt the presentation of CN’s Financial Statements and Accompanying Notes, in respect of the year ended 30 June 2018, together with the Auditor’s Report. This would result in CN not complying with the requirements of the Local Government Act 1993 (as amended). This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: City of Newcastle’s Financial Statements

Distributed under separate cover
ITEM-100  CCL 23/10/18 - TABLING OF PECUNIARY INTEREST RETURNS - ANNUAL REPORT

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER LEGAL

PURPOSE

For the Chief Executive Officer to table the annual register of pecuniary interest returns.

RECOMMENDATION

1 Council note the tabling of the annual register of pecuniary interest returns (for the financial year 2017/2018) by the Chief Executive Officer in accordance with s450A of the Local Government Act 1993 (NSW).

KEY ISSUES

2 Sections 449(3) and 450A of the Local Government Act 1993 (NSW) (Act) require:

i) Councillors and designated persons to lodge a pecuniary interest return in the form prescribed by the Local Government (General) Regulation 2005 (NSW) within three months of the end of each financial year disclosing interests for the previous financial year;

ii) The General Manager to table the pecuniary interest returns lodged in accordance with s449(3) of the Act at the first Ordinary Council Meeting held in October each year; and

iii) The General Manager to keep a register of returns lodged which may be accessed in accordance with the Government Information (Public Access) Act 2009 (GIPA Act).

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

i) General Manager;

ii) Senior staff;

iii) Council officers designated because of the exercise of Council functions; and

iv) Committee members because of the exercise of Council functions.

4 In accordance with s739 of the Act, City of Newcastle (CN) has amended the register of pecuniary interest returns to omit information that discloses a designated person’s place of living where:
i) The designated person requested that such information be deleted on the grounds that it would place their personal safety or their family's safety at risk; and

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

FINANCIAL IMPACT

5 Not applicable.

COMMUNITY STRATEGIC PLAN ALIGNMENT

6 Open and collaborative leadership. The tabling of the register of pecuniary interest returns aligns with the strategic direction of Open and Collaborative Leadership in CN's Community Strategic Plan. In particular, it achieves action 3.5: Open and Transparent Disclosures, as set out in the Open and Transparent Governance Strategy.

IMPLEMENTATION PLAN/IMPLICATIONS

7 On the day following the meeting, the register of pecuniary interest returns may be accessed by members of the public (at CN’s City Administration Centre) during business hours without an appointment.

8 At all other times, the register of pecuniary interest returns is available for inspection in accordance with the GIPA Act. CN’s procedure requires a person to make an appointment to view the register during business hours.

RISK ASSESSMENT AND MITIGATION

9 Compliance with legislative requirements for tabling of pecuniary interest returns is a key process supporting CN’s Open and Transparent Governance Strategy.

RELATED PREVIOUS DECISIONS

10 Pecuniary interest returns were last tabled at the Ordinary Council Meeting held on 28 August 2018 for designated persons who commenced with CN between 1 May and 31 July 2018.

CONSULTATION

11 Not applicable.

BACKGROUND

12 Not applicable.
OPTIONS

Option 1

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

Option 2

14 Council does not adopt the recommendation. The Act requires the pecuniary interest returns to be tabled at a Council meeting. Failure to do so would constitute a breach of s450A of the Act. This is not the recommended option.

REFERENCES

ATTACHMENTS

Nil.
ITEM-101 CCL 23/10/18 - ADOPTION OF INTERNAL REPORTING - PUBLIC INTEREST DISCLOSURES POLICY

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / MANAGER LEGAL

PURPOSE

To adopt the Internal Reporting - Public Interest Disclosures Policy (PID Policy).

RECOMMENDATION

1 Council adopts the Internal Reporting - Public Interest Disclosures Policy as set out at Attachment A.

KEY ISSUES

2 It is good practice for policies adopted by the elected Council to be revised and re-adopted in each Council term. The PID Policy has been reviewed and no changes identified as necessary. The policy template has been updated to reflect new naming conventions.

3 Section 6D of the Public Interest Disclosures Act 1994 (NSW) (PID Act) requires that City of Newcastle (CN) have a policy which provides a framework for receiving, assessing and dealing with public interest disclosures. The current PID Policy is consistent with the PID Act and current Model Policy.

4 The NSW Ombudsman is currently undertaking a review of the PID Act and their Model Policy. On completion of this process, CN will be required to review and update its policy accordingly.

5 In its 2017 Annual Report ‘Oversight of the Public Interest Disclosures Act 1994’, the NSW Ombudsman noted CN as demonstrating good governance practice, in particular when it comes to reporting pathways.

FINANCIAL IMPACT

6 There are no direct financial costs associated with this recommendation. CN’s 2018/19 budget includes allocations for any public interest disclosure investigations which may be required.

COMMUNITY STRATEGIC PLAN ALIGNMENT

7 The PID Policy aligns with the strategic direction of Open and Collaborative Leadership in CN's Community Strategic Plan. In particular, it achieves action 4.4: ‘Council takes steps to ensure it appropriately identifies and manages serious wrong-doing’, as set out in the Open and Transparent Governance Strategy.
IMPLEMENTATION PLAN/IMPLICATIONS

8 The Chief Executive Officer (CEO) is responsible for ensuring training and awareness is provided to all staff. CN provides in-house training (at induction, and by way of a governance refresher sessions or e-learning modules), as well as organises training provided by the NSW Ombudsman's office at least every 2 years.

9 Once adopted, the CEO will appoint the Disclosures Coordinator and Disclosures Officers (Annexure B) to reflect the organisational redesign.

RISK ASSESSMENT AND MITIGATION

10 The PID Policy is a key control supporting CN's Open and Transparent Governance Strategy.

RELATED PREVIOUS DECISIONS

11 At the Ordinary Council Meeting held on 22 October 2013, Council adopted the current Internal Reporting - Public Interest Disclosure Policy.

CONSULTATION

12 The PID Act and the Model Policy and Guidelines produced by the NSW Ombudsman prescribe the content of the PID Policy therefore further consultation was not required.

BACKGROUND

13 The PID Act sets in place a system to encourage public officials to report serious wrongdoing including corrupt conduct; maladministration; serious and substantial waste of public monies; government information contravention; and pecuniary interest contravention.

OPTIONS

Option 1

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

Option 2

15 Council does not adopt the PID Policy. This is not the recommended option.
REFERENCES

16  Public Interest Disclosures Act 1994 (NSW).

ATTACHMENTS

Attachment A: Internal Reporting - Public Interest Disclosures Policy
Attachment A

Policy

Internal Reporting – Public Interest Disclosure

City of Newcastle

October 2018
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Foreword

City of Newcastle is committed to ensuring it has an open and accountable framework for receiving, assessing and dealing with public interest disclosures.

CN encourages disclosures to be made internally using the formal mechanisms provided in this policy.

Jeremy Bath  
Chief Executive Officer

Cr Nuatali Nelmes  
Lord Mayor
Part A Preliminary

1 Purpose

1.1 The purpose of the policy is to encourage and facilitate the disclosure of wrongdoing by providing a framework for:

1.1.1 receiving, assessing and dealing with disclosures of wrongdoing in accordance with the PID Act; and

1.1.2 ensuring CN complies with the PID Act.

2 Scope

2.1 This policy applies to CN Officials who disclose wrongdoing in accordance with the PID Act.

3 Principles

3.1 City of Newcastle (CN) commits itself to the following principles:

3.1.1 Awareness: Ensuring CN Officials understand the benefits of disclosing wrongdoing and are familiar with this policy and the PID Act.

3.1.2 Confidentiality: Maintaining confidentiality in relation to the identity of the CN Officials who disclose wrongdoing wherever possible and appropriate.

3.1.3 Encouraging disclosure: Encouraging the disclosure of wrongdoing and acknowledging that CN Officials who disclose wrongdoing are exhibiting integrity and assisting CN to promote an accountable and ethical organisation.

3.1.4 Keeping people who make a disclosure informed: Keeping individuals who make reports informed on the progress and outcome.

3.1.5 Protection and support: Protecting and supporting CN Officials who disclose wrongdoing or who are the subject of a disclosure, including protecting the individual from adverse action as a result of the disclosure.

3.1.6 Thoroughness, impartiality and action: Dealing with all disclosures of wrongdoing thoroughly, impartially and, if some form of wrongdoing has been found, taking appropriate action.

3.1.7 Tone from the top: Ensuring managers at all levels understand the benefits of reporting, are familiar with this policy and aware of the needs of people who report wrongdoing.

3.1.8 Trust: Creating an environment of trust where CN Officials feel confident and comfortable disclosing wrongdoing.
Part B  Roles and responsibilities

4  CEO

4.1 The CEO is responsible for:
4.1.1 Ensuring this policy is accurate and up to date.
4.1.2 Creating awareness about this policy and the protections available under the PID Act for people who make a Public Interest Disclosure.
4.1.3 Ensuring CN meets its obligations under the PID Act and this policy.
4.1.4 Appointing a Disclosures Coordinator and Disclosures Officers.
4.1.5 Deciding if a disclosure about wrongdoing is a Public Interest Disclosure.
4.1.6 Receiving, assessing and dealing with disclosures about wrongdoing by CN Officials including referral to other authorities where appropriate.
4.1.7 Ensuring there are systems in place to support and protect people who make a Public Interest Disclosure.
4.1.8 Appropriately dealing with disclosures made under CN’s Code of Conduct and treating disclosures as Public Interest Disclosures where appropriate to do so.
4.1.9 Reporting actual or suspected corrupt conduct to the Independent Commission Against Corruption.
4.1.10 Ensuring that their actions adhere to the requirements of this policy and the PID Act including protecting and maintaining the confidentiality of the CN Official making the disclosure.

5  Lord Mayor

5.1 The Lord Mayor is responsible for receiving, assessing and dealing with disclosures about wrongdoing by the CEO including:
5.1.1 Ensuring there are systems in place to support and protect people who make a Public Interest Disclosure.
5.1.2 Determining if a disclosure about wrongdoing by the CEO is a Public Interest Disclosure.
5.1.3 Receiving, assessing and dealing with disclosures about wrongdoing of the CEO, including referral to other authorities where appropriate.
5.1.4 Appropriately dealing with disclosures made under the CN’s Code of Conduct about the CEO and treating disclosures as Public Interest Disclosures where appropriate to do so.
5.1.5 Reporting actual or suspected corrupt conduct by the CEO to the Independent Commission Against Corruption.
5.1.6 Ensuring that their actions adhere to the requirements of this policy and the PID Act including protecting and maintaining the confidentiality of the CN Official making the disclosure.

6  Disclosures Coordinator

6.1 CN’s Disclosures Coordinator is appointed by the CEO (refer to Annexure B for details). The Disclosures Coordinator is also the Complaints Coordinator under the Code of Conduct.
6.2 The Disclosures Coordinator is responsible for:

6.2.1 Assisting the CEO to perform the CEO's role under this policy and the PID Act.

6.2.2 Receiving disclosures about wrongdoing by CN Officials including referring disclosures to the CEO or Lord Mayor.

6.2.3 Ensuring that their actions adhere to the requirements of this policy and the PID Act including protecting and maintaining the confidentiality of the CN Official making the disclosure.

6.2.4 Ensure that instances of Detrimental Action are reported and dealt with under CN's Code of Conduct.

7 Disclosures Officers

7.1 CN's Disclosures Officers are appointed by the CEO (refer to Annexure B for details).

7.2 Disclosures Officers are responsible for:

7.2.1 Receiving disclosures about wrongdoing by CN Officials.

7.2.2 Forwarding such disclosures to the Disclosures Coordinator.

7.2.3 Ensuring that their actions adhere to the requirements of this policy and the PID Act including protecting and maintaining the confidentiality of the CN Official making the disclosure.

8 CN Officials

8.1 CN Officials are responsible for:

8.1.1 Disclosing wrongdoing.

8.1.2 Supporting CN Officials who have disclosed wrongdoing as well as protecting and maintaining their confidentiality. CN Officials should never victimise or harass anyone who has made a report about wrongdoing including a disclosure under this policy.

8.1.3 Reporting Detrimental Action (CN Officials who supervise staff must especially be aware of this obligation).
Part C  Reporting wrongdoing

9 What should be reported?

9.1 CN encourages CN Officials to report all activities or incidents of wrongdoing including:
  9.1.1 breaches of the Code of Conduct;
  9.1.2 harassment or unlawful discrimination;
  9.1.3 reprisal action against a person who has reported wrongdoing; or
  9.1.4 practices that endanger the health or safety of staff or the public.

9.2 If a CN Official suspects that wrongdoing has occurred but the circumstances do not meet the criteria of a Public Interest Disclosure set out in section 10, they are still encouraged to report the wrongdoing in accordance with:
  9.2.1 Code of Conduct (discuss with supervisor or contact CN’s Legal Team).
  9.2.2 EEO Grievance Procedure (discuss with supervisor or contact CN’s Human Resources Team).
  9.2.3 WHS policy and procedure - where practices endanger the health or safety of CN Officials or the public (discuss with supervisor or contact CN’s WHS Team).

9.3 CN takes all reports of wrongdoing seriously and will consider each report on its merits and make every attempt to protect those who make reports from reprisal action.

10 When will a report of wrongdoing be dealt with under this policy?

10.1 A disclosure about wrongdoing is only a Public Interest Disclosure in accordance with this policy if it satisfies all of the following criteria:

  10.1.1 The CN Official making the disclosure honestly believes on reasonable grounds that the information they are disclosing shows or tends to show:

    (a) Corrupt Conduct by CN, a CN Official or another public authority or its officers.
    (b) Maladministration by CN, a CN Official or another public authority or its officers.
    (c) Serious and Substantial Waste by CN or a CN Official.
    (d) Government Information Contravention by CN, a CN Official or another public authority or its officers.
    (e) Pecuniary Interest Contravention by CN or a CN Official.

This means, a Public Interest Disclosure cannot be based on a mere allegation or suspicion, the disclosure must be supported by facts and/or evidence.

10.1.2 The CN Official makes the disclosure to:

    (a) The Lord Mayor (if the disclosure relates to the CEO).
    (b) The CEO.
    (c) The Disclosure Coordinator.
    (d) A Disclosure Officer.
    (e) An Investigating Authority.
10.1.3 The disclosure does not principally involve the questioning of the merits of CN’s policies including a policy of the Council.

10.1.4 The disclosure is not made with the sole or substantial motive of avoiding dismissal or other disciplinary action.

10.1.5 The disclosure is not frivolous or vexatious.

11 When can Public Interest Disclosure be made to a Member of Parliament or journalist?

11.1 A disclosure about wrongdoing to a Member of Parliament or journalist is a Public Interest Disclosure if it satisfies all of the following requirements:

11.1.1 The CN Official has made substantially the same disclosure in accordance with section 10 to CN or an Investigating Authority.

11.1.2 In response to that disclosure, CN or the Investigating Authority:

   (a) Determined not to investigate the disclosure.
   (b) Determined to investigate the disclosure, but has not completed that investigation within six months of receiving the disclosure.
   (c) Investigated the disclosure but has not recommended any action.
   (d) Has not informed the CN Official whether the disclosure will be investigated within six months of receiving the disclosure.

11.1.3 The CN Official can prove that they have reasonable grounds for believing that the disclosure is substantially true and that it is in fact substantially true.

Note: An anonymous disclosure will not satisfy the above requirements.
Part D  Making a Public Interest Disclosure

12  Who should a Public Interest Disclosure be reported to?

12.1 Public Interest Disclosures should be reported as follows:

<table>
<thead>
<tr>
<th>If the Public Interest Disclosure is about:</th>
<th>It should be reported to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Lord Mayor</td>
<td>The CEO or an Investigating Authority</td>
</tr>
<tr>
<td>The CEO</td>
<td>The Lord Mayor or an Investigating Authority</td>
</tr>
<tr>
<td>The Lord Mayor and CEO</td>
<td>An Investigating Authority</td>
</tr>
<tr>
<td>A Councillor</td>
<td>The Lord Mayor, CEO or an Investigating Authority</td>
</tr>
<tr>
<td>A CN Officer</td>
<td>The CEO, the Disclosures Coordinator, a Disclosures Officer (refer to Annexure B) or an Investigating Authority</td>
</tr>
</tbody>
</table>

12.2 CN Officials who are members of staff may discuss a report about wrongdoing with their supervisor in the first instance.

12.3 If a CN Official who is not a Disclosures Officer receives a disclosure about wrongdoing that they suspect could be a Public Interest Disclosure, the CN Official must refer it to the relevant person identified in the table at clause [12.1]. It is important that confidentiality is maintained at all times by both the person making and receiving a report.

12.4 If a CN Official is considering disclosing wrongdoing to a person or organisation that is not listed in the policy, the CN Official should first confirm that the CN Official is not breaching their legal obligations or CN’s Code of Conduct by doing so.

13  How to make a Public Interest Disclosure

13.1 CN Officials can make a Public Interest Disclosure verbally or in writing to the relevant person as listed in the table at clause [12.1].

13.2 CN encourages Public Interest Disclosures to be made on CN’s Public Interest Disclosure report form but if a report is made verbally, the person receiving the report should make a comprehensive record of it and ask the person making the disclosure to sign the record.

13.3 If a CN Official is concerned about being seen making a disclosure, the CN Official can ask Disclosures Coordinator or a Disclosures Officer to meet in a discreet location or after work hours.

14  Anonymous Public Interest Disclosures

14.1 There may be circumstances when CN Officials making a report of wrongdoing wish to stay anonymous. CN will accept anonymous Public Interest Disclosures addressed to:
Private and confidential
Chief Executive Officer
PO Box 489
Newcastle NSW 2300.

14.2 If a Public Interest Disclosure is made anonymously, CN cannot:
14.2.1 provide feedback (an anonymous disclosure will not meet the criteria to be escalated to a journalist or Member of Parliament);
14.2.2 offer the same level of protection or support to the person making the disclosure; or
14.2.3 take steps to protect a person’s identity.

15 Confidentiality

CN Officials

15.1 A CN Official who makes a Public Interest Disclosure must keep the disclosure confidential and should only discuss the disclosure with the persons nominated as set out in their letter of acknowledgement.

CN

15.2 CN is committed to maintaining confidentiality around reports of wrongdoing, however, there may be situations where this is not possible or appropriate. A person’s identity will only be disclosed if:
15.2.1 The CN Official who made the Public Interest Disclosure consents in writing to the disclosure of that information.
15.2.2 It is generally known that the CN Official has made the Public Interest Disclosure as a result of the person having voluntarily identified themselves as the person who made the Public Interest Disclosure.
15.2.3 It is necessary, having regard to the principles of procedural fairness, that the identifying information be disclosed to a person whom the information provided by the Public Interest Disclosure may concern.
15.2.4 The CEO or Lord Mayor (if the disclosure relates to the CEO) is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

15.3 Where confidentiality cannot be maintained, CN will develop a plan to support and protect the person who made the Public Interest Disclosure from risks of Detrimental Action in consultation with the person who made the disclosure.
Part E  Acknowledgement, assessment and investigation of Public Interest Disclosures

16  Acknowledgement

16.1 When CN receives a Public Interest Disclosure, the CEO (or the Lord Mayor in the case of a disclosure about the CEO) and the Disclosures Coordinator will:

16.1.1 Within 10 working days of receiving the Public Interest Disclosure, provide an acknowledgement letter and a copy of this policy to the CN Official.

16.1.2 The acknowledgement letter will include the following details:

(a) confirmation that the Public Interest Disclosure has been received;
(b) the timeframes as to when CN will provide the CN Official with an update;
(c) names and contact details of the persons with whom the CN Official can discuss their Public Interest Disclosure, including who to contact about concerns; and
(d) information about support services – including services available at CN, such as EAP and the availability of external agencies.

16.1.3 If the following information cannot be provided in the acknowledgment letter, CN will provide an updated letter within 10 working days and after a decision is made about how to deal with the Public Interest Disclosure, setting out:

(a) information about the action that will be taken in response to the report; and
(b) likely timeframes for any investigation.

17  Assessment

17.1 On receipt of a Public Interest Disclosure, the CEO or the Lord Mayor (in the case of a disclosure about the CEO) will:

17.1.1 assess Public Interest Disclosures in accordance with the PID Act and any applicable procedure or guideline, and

17.1.2 determine what action should be taken.

18  Investigation

18.1 The CEO or the Lord Mayor (in the case of a disclosure about the CEO) may determine to investigate the Public Interest Disclosure.

18.2 During any investigation, the CN Official who made the Public Interest Disclosure will be given:

18.2.1 information on the ongoing nature of the investigation;
18.2.2 information about the progress of the investigation and reasons for any delay; and
18.2.3 advice if their identity needs to be disclosed for the purposes of investigating the matter, and an opportunity to talk about this.

18.3 At the end of any investigation, the CN Official who made the Public Interest Disclosure will be given:
18.3.1 enough information to show that adequate and appropriate action was taken and/or is proposed to be taken in response to their disclosure and any problem that was identified; and

18.3.2 advice about whether you will be involved as a witness in any further matters, such as disciplinary or criminal proceedings.
Part F Detrimental Action

19 Reporting Detrimental Action

19.1 CN will not tolerate any Detrimental Action being taken against a CN Official for making a Public Interest Disclosure.

19.2 If a CN Official who has made a Public Interest Disclosure believes that Detrimental Action is being taken against them for making a Public Interest Disclosure, they should report the action immediately in accordance with the table at clause 12.1.

19.3 If a CN Official believes that Detrimental Action is being taken against another CN Official for making a Public Interest Disclosure, the CN Official should report the action immediately in accordance with the table at clause 12.1.

20 Response to Detrimental Action

Penalties, discipline and liability

20.1 The PID Act provides protection for people who report wrongdoing in accordance with this policy and the PID Act. Findings of Detrimental Action may:

20.1.1 result in a person being guilty of an offence as provided in the PID Act with criminal penalties applying;

20.1.2 be a breach of CN's Code of Conduct for which disciplinary action may be taken in accordance with the Award; or

20.1.3 result in a person who has taken Detrimental Action being liable for payment of damages for any loss suffered in accordance with the PID Act.

CEO to respond to reports of Detrimental Action

20.2 If CN receives a Public Interest Disclosure in accordance with the policy, the Lord Mayor, CEO or Disclosures Coordinator must:

20.2.1 conduct a risk assessment to identify any risks to the CN Official who made the Public Interest Disclosure;

20.2.2 collaborate with the CN Official who made the Public Interest Disclosure to develop strategies to address those risks, which may include:

20.2.2.1 issuing warnings to CN Officials about the consequences of any Detrimental Action taken against the CN Official who made the Public Interest Disclosure;

20.2.2.2 relocating or transferring the CN Official who made the Public Interest Disclosure and/or the CN Official who the disclosure was about; or

20.2.2.3 granting the CN Official who made the Public Interest Disclosure and/or the CN Official who the disclosure was about a leave of absence during any investigation; and

20.3 If a CN Official who has reported wrongdoing feels that any Detrimental Action is not being dealt with effectively, they should contact the NSW Ombudsman, the Independent Commission Against Corruption, or the Division of Local Government (refer to Annexure A for contact details).
Part G  Support and protection

21  Protection against legal action

21.1 If a CN Official makes a Public Interest Disclosure, the CN Official will:
   21.1.1 not be subject to any liability for making the Public Interest Disclosure;
   21.1.2 be protected from any claim or demand taken against them for making
   the Public Interest Disclosure;
   21.1.3 not have breached any confidentiality or secrecy obligations in relation
   to the Public Interest Disclosure; or
   21.1.4 have the defence of absolute privilege in defamation.

22  False and misleading statements

22.1 CN Officials must not make false or misleading statements when making a
disclosure. This is an offence under the PID Act.

23  Support for CN Officials reporting wrongdoing

23.1 CN will ensure that CN Officials who have reported wrongdoing, regardless of
whether they have made a Public Interest Disclosure, are provided with access
to support. The support available includes:
   23.1.1 CN’s Employee Assistance Program; and
   23.1.2 the availability of CN’s Workplace Contact Officers in various work
   areas.

24  Support for CN Officials who are the subject of a
    Public Interest Disclosure

24.1 CN will ensure that the CN Official who is the subject of a Public Interest
Disclosure is:
   24.1.1 treated fairly and with impartiality;
   24.1.2 informed of their rights and obligations;
   24.1.3 kept informed during any investigation;
   24.1.4 given the opportunity to respond to any allegation made against them;
   24.1.5 advised of the outcome of any investigation;
   24.1.6 provided with information about support available from CN or external
   agencies; and
   24.1.7 provided with access to CN’s Employee Assistance Program.
Part H  Resourcing and reporting

25  Resourcing

25.1  CN will ensure it allocates adequate resources to:

   25.1.1  encourage reports of wrongdoing;
   25.1.2  protect and support those who make them;
   25.1.3  provide training about how to make reports and the benefits of internal
           reports to CN and the public interest generally;
   25.1.4  properly investigate allegations;
   25.1.5  properly manage any workplace issues that the allegations identify or
           that result from a report; and
   25.1.6  appropriately address any identified problems.

26  Reporting to NSW Ombudsman

26.1  The CEO and CN’s Disclosures Coordinator are responsible for ensuring CN
      submits reports to the NSW Ombudsman’s Office in accordance with its
      obligations under the PID Act.
Annexure A – Investigating Authorities

For disclosures about Corrupt Conduct:
Independent Commission Against Corruption (ICAC)
Phone: 02 8281 5999
Toll free: 1800 463 909
Tel. typewriter (TTY): 02 8281 5773
Facsimile: 02 9264 5364
Email: icac@icac.nsw.gov.au
Web: www.icac.nsw.gov.au
Address: Level 7, 255 Elizabeth Street, Sydney NSW 2000

For disclosures about Maladministration:
NSW Ombudsman
Phone: 02 9286 1000
Toll free (outside Sydney metro): 1800 451 524
Translating and Interpreter Service (TIS): 131 450
National Relay Service: 1300 555 727 then ask for 02 9286 1000
Email: nswombo@ombu.nsw.gov.au
Web: www.ombu.nsw.gov.au
Address: Level 24, 580 George Street, Sydney NSW 2000

For disclosures about breaches of the GIPA Act:
Information Commissioner
Toll free: 1800 472 679
Translating and Interpreter Service (TIS): 131 450
National Relay Service: 131 677
Email: ipcinfo@ipc.nsw.gov.au
Web: www.ipc.nsw.gov.au
Address: Level 17, 201 Elizabeth Street, Sydney NSW 2000

For disclosures about corrupt conduct, maladministration, serious and substantial waste, breaches of GIPA or pecuniary interest contraventions:
Division of Local Government,
Department of Premier and Cabinet
Phone: 02 4428 4100
Tel. typewriter (TTY): 02 4428 4209
Interpreter Services: 02 4428 4100 and request interpreter services
Facsimile: 02 4428 4199
Email: olg@olg.nsw.gov.au
Web: www.olg.nsw.gov.au
Address: 5 O’Keefe Avenue, Nowra, NSW 2541

NOTE: It is very likely the Investigating Authority will discuss reports made to them with CN. CN will assist and cooperate with the Investigating Authority to ensure the matter is dealt with appropriately and there is a satisfactory outcome. CN will also provide appropriate support and assistance to individuals who report wrongdoing to an Investigating Authority.
Annexure B – Disclosures Coordinator and Disclosures Officers

The CEO appoints the Disclosure Coordinator and Disclosures Officer from time to time.
Annexure C - Definitions

CEO means Chief Executive Officer of the City of Newcastle 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).

City of Newcastle (CN) means Newcastle City Council.

CN Official means a:
- Councillor;
- CN Officer (including part time, temporary and casual officers);
- individuals engaged by CN under a contract to provide services to or on behalf of CN (such as consultants and contractors); or
- individuals having public official functions where their conduct could be investigated by an Investigating Authority (such as members of CN committees and volunteers).

Council means the elected Council.

Corrupt Conduct means dishonest or partial exercise of official functions by a CN Official. For example:
- improperly using knowledge, power or position for personal gain or the advantage of others;
- acting dishonestly or unfairly, or breaching public trust; or
- using their position in a way that is dishonest, biased or breaches public trust.

For more information about corrupt conduct, see the [NSW Ombudsman’s guideline on what can be reported](#).

Detrimental Action means action causing, comprising or involving:
- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from or prejudice in employment; and
- disciplinary proceedings.

Government Information Contravention means a failure to properly fulfil functions under the *Government Information (Public Access) Act 2009 (GIPA Act)*. For example:
- destroying, concealing or altering records to prevent them from being released;
- knowingly making decisions that are contrary to the legislation; or
- directing another person to make a decision that is contrary to the legislation.

For more information about government information contravention, see the [NSW Ombudsman’s guideline on what can be reported](#).

Investigating Authority means an authority listed in Annexure A. CN Officials can contact the relevant authority for advice about how to make a disclosure.

Local Government Pecuniary Interest Contravention means the failure to fulfil certain functions under the *Local Government Act 1993* relating to the management of pecuniary interests. A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. For example:
- a senior CN Officer recommending a family member for a CN contract and not declaring the relationship; or
• a senior CN Officer holding an undisclosed shareholding in a company competing for a CN contract.

For more information about local government pecuniary interest contravention, see NSW Ombudsman’s guideline on what can be reported.

Maladministration means conduct that involves action or inaction of a serious nature that is contrary to law, unreasonable, unjust, oppressive or improperly discriminatory or based wholly or partly on improper motives. For example:

• making a decision and/or taking action that is unlawful; or
• refusing to grant an approval for reasons that are not related to the merits of their application.

For more information about maladministration, see NSW Ombudsman’s guideline on what can be reported.

PID Act means the Public Interest Disclosure Act 1994 (NSW).

Serious and Substantial Waste means the uneconomical, inefficient or ineffective use of resources that could result in the loss or wastage of local government money. This includes all revenue, loans and other money collected, received or held by, for or on account of CN. For example:

• poor project management practices leading to projects running over time; or
• having poor or no processes in place for a system involving large amounts of public funds.

For more information about serious and substantial waste, see NSW Ombudsman’s guideline on what can be reported.

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

<table>
<thead>
<tr>
<th>Function</th>
<th>Position Number / Title</th>
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<tbody>
<tr>
<td>Appointment of Disclosures Coordinator and Disclosures Officers</td>
<td>CEO</td>
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## Document Control

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<td>Policy owner</td>
<td>Chief Executive Officer</td>
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<tr>
<td>Policy expert/writer</td>
<td>Manager Legal</td>
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<td>Relevant strategic direction</td>
<td>Open and Collaborative Leadership</td>
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<td>Open and Transparent Governance Strategy</td>
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<td></td>
<td>Fraud and Corruption Control Strategy</td>
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<tr>
<td>Relevant legislation/codes (reference specific sections)</td>
<td>Local Government Act 1993 (NSW)</td>
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<td></td>
<td>Local Government (General) Regulation 2005 (NSW)</td>
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<td></td>
<td>Public Interest Disclosures Act 1994 (NSW)</td>
</tr>
</tbody>
</table>
| Other related policies/ documents/ strategies | Code of Conduct  
| EEO Grievance Procedure  
| Related forms | Public Interest Disclosure reporting form  
| Required on website | Yes  
| Authorisations | Functions authorised under this Policy at Annexure D |
ITEM-102 CCL 23/10/18 - ADOPTION OF DRAFT SECTION 6.03 Wickham OF NEWCASTLE DEVELOPMENT CONTROL PLAN 2012

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

PURPOSE

To adopt draft Newcastle Development Control Plan 2012 (DCP) Section 6.03 Wickham and Section 6.01 Newcastle City Centre following public exhibition.

RECOMMENDATION

1 Council resolves to:
   i) Adopt draft Section 6.03 Wickham (*Attachment A*) for inclusion into DCP.
   ii) Amend the area to which Section 6.01 Newcastle City Centre of DCP applies (*Attachment B*) by excluding the land to which draft Section 6.03 Wickham applies.

KEY ISSUES

2 Draft Section 6.03 Wickham of DCP was exhibited from Monday 12 March 2018 to Thursday 12 April 2018.

3 City of Newcastle (CN) received five written submissions during the public exhibition period (*Attachment C*).

4 The draft DCP was reviewed having regard to the submissions received and to improve formatting and usability. The proposed changes were predominantly related to controls applying to the Village hub precinct, which reflect the envisaged character and scale of potential redevelopment. Further details of proposed changes resulting from the submissions are outlined in the attachment.

5 Following consultation with Mines Advisory NSW, an additional note is included within the DCP to draw attention to Mine Subsidence risk within part of Wickham and the need to consult with Mines Advisory NSW in preparing a development proposal.

6 Adoption of the draft DCP will ensure the vision, principles, and strategies of the Wickham Master Plan are implemented through future development proposals.
FINANCIAL IMPACT

7 The cost associated with the preparation and exhibition of the draft DCP is funded through CN’s operational budget.

COMMUNITY STRATEGIC PLAN ALIGNMENT

8 The adoption of the draft DCP aligns with the following directions of Newcastle 2030 Community Strategic plan:

Liveable Built Environment

5.1c Facilitate well designed and appropriate scale development that complements Newcastle’s unique character.

5.2a Plan for concentrated growth around transport and activity nodes.

Smart and Innovative

6.3d Foster a collaborative approach to continue city centre renewal.

Open and Collaborative Leadership

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

IMPLEMENTATION PLAN/IMPLICATIONS

9 The process for preparing and amending DCPs and the matters that a DCP may deal with are specified in the Environmental Planning and Assessment Act 1979 (the Act) and associated Regulation.

10 Adoption of the draft DCP will contribute to the implementation of the vision and strategies identified within the Wickham Master Plan.

RISK ASSESSMENT AND MITIGATION

11 The adoption of the draft DCP reduces the risk of inconsistent development proposals, by providing guidance on the envisaged built outcomes on land within Wickham. The adoption of the draft DCP contributes to the implementation of the vision of the Wickham Master Plan and provides greater certainty to the local community regarding the built form of development likely to occur in Wickham.

RELATED PREVIOUS DECISIONS

12 At the Ordinary Council Meeting held on 27 February 2018, Council resolved to exhibit the draft DCP for 28 days, receive a report on written feedback and identify any further amendments arising from these.
13 The draft DCP seeks to implement the Wickham Master Plan which was adopted by Council at the Ordinary Council Meeting held on 17 November 2017.

CONSULTATION

14 The draft DCP was exhibited for 28 days as per Council's resolution of 27 February 2018 and included provision of the draft DCP on CN's website, printed copies at both CN's administration centre and Newcastle Library.

15 The exhibition built on the extensive engagement undertaken as part of preparing the Wickham Master Plan by notifying key stakeholders such as landowners, State Government agencies, community and business groups, development industry organisations and associations, and others that had previously registered their interest during in the Wickham Master Plan process.

16 CN staff met with stakeholders to discuss the draft DCP and to receive feedback on the proposed controls.

17 Five written submissions were received during the exhibition. These represented the views of a local resident, landowner / developer, community group, industry group, and interest group. A summary of the submissions is included. The summary outlines the issues raised, a planning response, and resulting actions.

BACKGROUND

18 The development controls applying to Wickham are currently in both Section 6.01 Newcastle City Centre and Section 6.03 Wickham of DCP. These controls were based on urban design guidelines prepared in 2006 that are no longer applicable.

19 Draft Section 6.03 Wickham was prepared to implement the vision and strategies of the Wickham Master Plan adopted in November 2017 and replace the current controls in the DCP.

OPTIONS

Option 1

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

Option 2

21 Council not adopt the draft DCP. This option would result in development proposals being assessed against the existing controls and thereby not implementing the envisaged character and actions identified in the Wickham Master Plan adopted by Council in November 2017. This is not the recommended option.
REFERENCES

ATTACHMENTS

Attachment A: Draft Section 6.03 Wickham

Attachment B: Draft amendment to land application of Section 6.01 Newcastle City Centre

Attachment C: Summary of submissions to draft Section 6.03 - Wickham of Newcastle Development Control Plan 2012
### Amendment history

<table>
<thead>
<tr>
<th>Version Number</th>
<th>Date Adopted by Council</th>
<th>Commencement Date</th>
<th>Amendment Type</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>15/11/2011</td>
<td>15/06/2012</td>
<td>New</td>
</tr>
<tr>
<td>2</td>
<td>27/06/2017</td>
<td>10/07/2017</td>
<td>Amended</td>
</tr>
<tr>
<td>3</td>
<td>TBC</td>
<td>TBC</td>
<td>Amended</td>
</tr>
</tbody>
</table>

### Savings provisions

Any development application lodged but not determined prior to this section coming into effect will be determined taking into consideration the provisions of this section.

### Land to which this section applies

This section applies to all land within the heavy black line marked on Figure 6.03-1 - Wickham

### Figure 6.03 - 1 - Wickham

![Map of Wickham area](image)

### Development (type/s) to which this section applies

This section applies to all development consisting:
- New buildings or structures
- Additions or alterations to existing buildings or structures
- Subdivision
Applicable environmental planning instruments and legislation

The provisions of the Newcastle Local Environmental Plan 2012 apply to development applications to which this section applies.

Additional environmental planning instruments, including relevant State Environmental Planning Policies may also apply. In the event of any inconsistency between this section and an applicable environmental planning instrument, the environmental planning instrument will prevail to the extent of the inconsistency.

Note: Section 74E (3) of the Environmental Planning and Assessment Act 1979 enables an environmental planning instrument to exclude or modify the application of this DCP in whole or part.

Related sections

The following sections of this DCP will also apply to development to which this section applies:
- Any applicable land use specific provision under Part 3.00
- 4.04 Safety and Security
- 7.02 Landscape, Open Space and Visual Amenity
- 7.03 Traffic, Parking and Access
- 7.06 Stormwater
- 7.08 Waster Management

The following sections of this DCP may also apply to development to which this section applies:
- 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
- 4.03 Mine Subsidence - within a mine subsidence area
- 4.05 Social Impact - where required under 'Social Impact Assessment Policy for Development Applications', 1999
- 5.01 Soil Management - works resulting in any disturbance of soil and/or cut and fill
- 5.02 Land Contamination - land on register or where risk from previous use
- 5.03 Vegetation Management - declared vegetation within 5m of a development footprint or likely to be affected by a development
- 5.04 Aboriginal Heritage - known/likely Aboriginal heritage item and/or place of significance 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
- 7.04 Movement Networks - where new roads, pedestrian or cycle paths are required
- 7.06 Energy Efficiency
- 7.07 Water Efficiency
- 7.09 Advertising and Signage
- 7.10 Street Awnings and Balconies - awnings or balconies located over public land.

In the event of an inconsistency between provisions within this section and any other section of the Newcastle Development Control Plan 2012, the provisions of this section will apply to the extent of the inconsistency.
Associated technical manuals

- Wickham Master Plan
- City Centre Public Domain Technical Manual

Purpose of this section

This section of the Newcastle Development Control Plan provides detailed standards and guidance for development in order to implement the Wickham Master Plan (2017).

It integrates place based planning and design guidelines to inform future redevelopment, consistent with the vision of the area as set out in the Wickham Master Plan, in particular the characteristic features of each of the five identified interconnecting precincts (Key Precincts) within Wickham.

This section provides performance criteria that explain the planning outcomes to be achieved. Accompanying the performance criteria are acceptable solutions that illustrate the preferred way of complying with the performance criteria. There may be other ways of meeting the performance criteria and it is up to the applicant to demonstrate how the performance criteria are met.

Development Application requirements

All applications that include the erection of a new structure or the extension of an existing structure with a height exceeding 8.5m are to be accompanied with a 3D model of the proposed development within the context of the Newcastle CBD 3D model.

The format should be compatible to that used by the Newcastle City Council.

The 3D Model should be used to illustrate the following information:
- context ‘before’ and ‘after’ streetscape drawings/images and/or photomontages;
- shadow diagrams, and
- assessment of impact on view corridors.

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 it is otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Section 9.00 - Glossary, of this plan, and include:

- **Urban activation space** - a small public space that acts as a ‘micro-scale’ neighbourhood park that that contributes to the public domain through plantings and/or specific use or functions (e.g. small playground, community garden, or gathering space). Urban activation space is usually provided on corner sites within the development setback to the street and is incorporated into the road reserve.
6.03.01 Urban Character

Wickham will continue to evolve from a semi-industrial area at the outer fringe of Newcastle City Centre into a mixed use urban neighbourhood supporting the emerging commercial core within Newcastle West.

Urban renewal is envisaged to build on the existing urban structure to deliver greater connectivity, improved public domain amenity and built form which reflects the function and character of the area Key Precincts.

The controls applying to this section of the DCP are based on achieving the intended future character of each key precinct, as identified in Figure 6.03 - 2 Key precincts, consistent with the Vision of the Wickham Master Plan (2017).

Any variation to the 'acceptable solutions' proposed as an alternative means of meeting the specific ‘performance criteria,’ will need to be justified having regard to achieving the future character of the relevant precinct.

Figure 6.03 - 2 - Key precincts
A. Rail Edge

Existing character

The Rail Edge precinct contains a mix of uses and building types and provides an interface to the emerging commercial core of Newcastle West.

Future character

The precinct is envisaged to support high density residential development that capitalises on its location adjacent to Newcastle Transport Interchange and provide ground level commercial uses, with neighbourhood level retail and services activating street corners. Building scale and form transitions down to integrate with the lower scale Village Hub precinct fronting Bishopsgate Street.

Figure 6.03 - 3 - Potential future built form of the Rail Edge precinct
B. Village Hub

Existing character

The Village Hub retains much of the original residential subdivision patterns established in the 1800s, which is characterised by narrow streets and a mix of lower scale residential building typologies. Buildings are set back from the front boundary and the front setback typically contains landscaping and forecourts.

Future character

Redevelopment and infill development is envisaged to include terrace style housing, shop top housing and smaller residential apartment buildings up to three storeys in height which incorporate design elements complementary to existing housing stock. Opportunities for onsite car parking and driveway access are limited to ensure priority to pedestrian amenity and safety.

Union Street provides the main north-south pedestrian connection with wide footpaths and street trees, linking the predominantly residential precinct the Newcastle Transport Interchange. Retail and commercial activity are focused along Union Street while the east west orientated streets maintain a residential focus.

Figure 6.03 - 4 - Potential future built form of the Village Hub precinct
C. Harbour Edge

**Existing character**

The precinct is characterised by predominately three storey high buildings with uses that reflect the mixed residential, maritime, tourism and entertainment activities along the water edge.

**Future character**

The Harbour Edge Precinct builds on the recreational and economic opportunities on offer within this prime waterfront location, by supporting intensification of use while retaining vistas and connections between Hannell Street and Throsby Creek.

*Figure 6.03 - 5 - Potential future built form of the Harbour Edge precinct*
D. Emerging Industry Quarter

Existing character

The Emerging Industry Quarter is characterised by larger development sites and wider streets. The Precinct predominately accommodates employment uses including service industries, small scale niche manufacturing and research and development technologies.

Future character

Redevelopment is envisaged to provide opportunities for fostering business and employment generation uses.

The former Bullock Island corridor is adapted as open space and embellished to form a publicly accessible landscape element within the redevelopment site.

Figure 6.03 - 6 - Potential future built form of the Emerging Industry Quarter precinct
E. Park Edge

Existing character

The Park Edge precinct is characterised by large sites containing commercial, light industrial, storage and warehouse uses backing onto the eastern side of Wickham Park.

Future character

The Park Edge precinct will provide activation and natural surveillance to Wickham Park from a mix of uses. The precinct may also contain public parking facilities integrated into development parcels.

The precinct will provide key connections for pedestrians and cyclists through the extension to Holland Street and the opening of the former Bullock Island rail corridor for public access. The precinct will include the creation of a new development parcel in the former railway lands, and the construction of a new one way street extending along the southern boundary of Wickham Park from Maitland Road to Railway Lane.

*Figure 6.03 - 7 - Potential future built form of the Park Edge precinct*
6.03.02 Building Envelopes

A. Setbacks to streets

Performance criteria

P1. Buildings setbacks define the street edge and public domain and reinforce the envisaged character of each precinct.

Acceptable solutions

A1. Building setbacks to street boundaries are consistent with Figure 6.03-8

A2. Where land is identified for acquisition by Council, in Figure 6.03-8, the minimum setback includes the land to be acquired plus any additional identified setback.

A3. Where building setbacks are not specified in Figure 6.03-8, buildings may be built to the street edge (zero setback) at ground level but only for:

(a) non-residential uses where the street facing façade has a minimum of 50% windows and/or other openings; or

(b) residential uses consisting of the covered private open space (outdoor living) component and where screened and/or elevated from the adjacent footpath/public domain area.

Note: Further design criteria for development interface to the public domain are provided in Section compliance with section 6.03.03 Urban Design

A4. Minimum setbacks to the street front for upper levels are consistent with the ground level setbacks, except where identified in the table below:

<table>
<thead>
<tr>
<th>Precinct</th>
<th>Minimum street setback above 12m building height</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rail Edge</td>
<td>6m</td>
</tr>
<tr>
<td>Village Hub</td>
<td>N/A</td>
</tr>
<tr>
<td>Harbour Edge</td>
<td>N/A</td>
</tr>
<tr>
<td>Emerging Industry Quarter</td>
<td>6m</td>
</tr>
<tr>
<td>Park Edge</td>
<td>6m</td>
</tr>
</tbody>
</table>

Note: Where the requirements of SEPP 65 and/or the Department of Planning and Environment’s ‘Apartment Design Guide’, apply to a development proposals subject to this section, any inconsistencies in minimum setbacks will be resolved by the greater of the two setbacks applying.
Additional acceptable solutions applying to development within the Village Hub Precinct

A5. Within the Village Hub precinct development may encroach into the minimum street setback at the first level (i.e. second storey) for 50% of the frontage but only where the encroachment is for private open space such as a veranda, balcony, pergola or deck.

A6. Development fronting Bishopsgate Street has an upper level setback of 6m from the street boundary for parts of the building above 9m.

A7. Large scale development incorporates building articulation such that the building form is broken into smaller elements that relate to the fine grain pattern of development along Bishopsgate Street.
B. Setbacks to neighbouring sites

Performance criteria

P1. Side setbacks provide opportunity for landscaping and protect amenity to adjoining sites.

P2. Development provides natural surveillance to side and rear setback areas.

P3. Redevelopment within the Harbour Edge precinct provides for public access and views to Throsby Creek.

Acceptable solutions for all precincts, except the Village Hub

A1. Development may be built to the side boundary (zero setback) for a height up to 8.5m where a landscaped setback of at least 3m from the side boundary is provided within the first 6m from any street fronting boundary, as shown in Figure 6.03 - 09.

A2. The landscaped side setback (described above):

(a) consists of deep root planting with suitable trees, shrubs and groundcovers; and

(b) is visible from adjoining uses (within the site) through the placement of windows and open space areas.

Additional acceptable solutions for the Harbour Edge precinct

A3. Development provides pedestrian and cycling links between Hannell Street and Throsby Creek.

A4. Built form within the Harbour Edge precinct enables view lines to Throsby Creek from the east-west orientated streets to the west of Hannell Street.
Figure 6.03 - 9 - Side setbacks

Where building envelopes have no setback to street front (zero setback)

Where building envelopes are setback from street front
6.03.03 Urban Design

A. Interface to the street

Performance criteria

P1. Ground level uses promote pedestrian activation of the public domain

P2. Development facilitates natural surveillance of the public domain.

P3. Building form reflects the envisaged precinct character and takes design cues from existing built elements within the streetscape.

Acceptable solutions

A1. The following design elements are incorporated in development facing a street or public domain area:

(a) building name and/or street number signage are easily identifiable;

(b) building entries are well-lit;

(c) individual ground floor uses have direct pedestrian access to footpath;

(d) universal access is provided to non-residential ground floor uses where the finished floor level is above or below the footpath;

(e) non-residential ground floor uses are visible from the street;

(f) the floor level of residential ground floor uses may be elevated not more than 1m above the footpath;

(g) building street setbacks incorporate gardens and/or landscaped forecourts; and

(i) green walls and/or street art (e.g. murals) are provided to reduce and/or break up non active building facades (i.e. blank walls, screened areas, services and utility cabinets, and/or garage doors).

A2. Development on corner sites activate at least 50% each façade.

A3. Residential development at ground level has a minimum 4m ceiling height and is designed to enable change of use in the future.
B. Urban activation spaces

**Performance criteria**

P1. Development incorporates space that provides relief from the hard surfaces of the urban environment and for residents and the local community to gather or participate in activities.

**Acceptable solutions**

A1. Urban activation spaces are located:

(a) In central locations along identified pedestrian and cycle routes and at street corners as identified in Figure 6.03 - 13; and

(b) Within the front setback of larger development sites and partly incorporated into the road reserve; and

(c) Adjoining supporting retail or community activities that provide natural surveillance, but do not commercialise the space for their own business.

A2. Urban activation spaces incorporate uses or facilities such as:

(a) shade and tree plantings;
(b) community gardens;
(c) rain gardens;
(d) furnishings such as seats, bins and drinking fountains;
(e) play equipment;
(f) lawns and paved areas;
(g) small stage areas with plugin facilities for open air music, performance or screenings;
(h) lighting;
(i) Wi-Fi;
(j) public facilities

**Figure 6.03 - 12 - Urban activation space**

![Image of urban activation spaces]
Figure 6.03 - 13 - Location of Urban activation spaces

C. Vehicle access to land

Performance criteria

P1. Vehicle and service entry ensure the safety and amenity of pedestrians.

Acceptable solutions

A1. Vehicle access and service entries are located consistent with Figure 6.03-10.

A2. Driveway crossings are consolidated or eliminated along the primary frontage of new developments.

Acceptable solutions - Village Hub

A3. For development consisting of two or more dwellings, on-site car parking is consolidated to minimise the number of driveways.

A4. Driveway access is single vehicle width at the footpath crossover.
6.03.04 Car Parking

A. Car parking demand management

Performance criteria

P1. Provision of car parking caters for the demands of different uses and reflects the proximity to the city centre and active and public transport options.

P2. Consumer choice and affordability is provided in the ownership of car parking spaces.

Acceptable solutions

A1. Car parking spaces are created as separate lots in the strata plan and are not allocated to individual units.

Note: Residential parking permits are not available to owners or occupants of new developments and this information is required to be provided by the developer to all potential owners and occupants.

A2. Designated car sharing spaces are retained as common property in the strata plan and are:

(a) clearly marked and sign-posted as car share spaces; and

(b) located so that they accessible to the public at all times.

Draft Newcastle Development Control Plan 2012
B. Design of parking structures

Performance criteria

P1. Parking structures are integrated into new buildings and are not visually prominent from the public domain.

P2. The design and construction method of at grade and above ground car parking areas enable adaptable reuse in the future for residential or commercial uses.

P3. Car parking areas are able to be adapted in response to changing future transport mode or demands.

Acceptable solutions

A1. All parking is located within the building footprint, either in a basement or integrated into the building.

A2. Ground level or above ground parking areas are not visible from the public domain by:

   (a) being located behind other uses; or

   (b) using green walls and roofs; or

   (c) using architecturally designed façade treatment or artwork.

A3. Car parking is located on level flooring and has a minimum ceiling height of:

   (a) 4m where located on ground level; and

   (b) 3m where located on any upper levels.
6.03.05 Constraints on development

A  Flooding

Performance criteria

P1 Basement car parks minimise the entry of flood water and include information on emergency egress.

Acceptable solution

A1. Entry ramps, ventilation points and pedestrian exits prevent flood water entering the a basement carpark until the last possible moment in a flood event as shown in Figure 6.03-11.

Figure 6.03 - 11 - Basement ramp design to minimise inundation

Additional performance criteria for land in Park Edge precinct

P2 Development on land bounded by the former Bullock Island rail corridor, Railway and Holland Streets does not adversely impact on the local hydrology or increase the risk of localised flooding on adjoining land in a stormwater event.

Additional acceptable solution for land in Park Edge precinct

A2. Where the area to be filled and/or built upon exceeds 20% of the land, development includes and overland flow path (designed and certified by a suitably qualified engineer) for the relief of stormwater from Railway Street to Wickham Park.

B  Mine Subsidence

Note: All proposed development on land in Wickham identified within the Newcastle Mine Subsidence District will need to be assessed on application by Subsidence Advisory NSW. Due to the nature of the old mine workings in the area, redevelopment is likely include significant and costly engineering controls including extensive grouting.

Council advises prospective applicant to first contact Subsidence Advisory NSW to gain an understanding of the potential risks, limitations and financial costs associated with developing over the old mine workings.
Attachment B:

*Draft amendment to land application of Section 6.01 Newcastle City Centre*
## Attachment C

### Summary of submissions to draft Section 6.03 - Wickham of Development Control Plan 2012

**Acronyms**

The following is a list of acronyms used throughout the following tabled summary of submissions and planning responses:

- WMP - Wickham Master Plan
- TNSW - Transport for NSW
- SA NSW - Subsidence Advisory NSW
- RMS - Roads and Maritime Services
- LRA - Land Reservation Acquisition
- LEP - Local Environmental Plan
- LATM - Local Area Traffic Management Study
- HOB - Height of Building
- FSR - Floor Space Ratios
- DCP - Development Control Plan

<table>
<thead>
<tr>
<th>Submission by</th>
<th>Issues Raised</th>
<th>Planning Response</th>
<th>Resulting Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>A, Submission by landowner/resident of Wickham</td>
<td>The WMP and DCP instruments have little detail on use of Crown Land</td>
<td>This DCP guides development on private land and crown land not zoned for open space or infrastructure. As such the DCP sets controls for Crown land zoned B4 Mixed Use but not on land zoned RE1 Public Recreation. Development of parkland is controlled through a plan of management.</td>
<td>No change</td>
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<tr>
<td>A</td>
<td>Is Crown Land - Wickham Park area going to be reduced because of car parks to be built?</td>
<td>The WMP identifies consolidation of current random parking arrangements but as stated above the DCP does not apply to Wickham Park.</td>
<td>No change</td>
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<td>Planning Response</td>
<td>Resulting Action</td>
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<tr>
<td>A</td>
<td>Swamping happens across Wickham Park (Edge) and areas, this is a drainage problem affecting the residential movement, large crowds, gardens and markets? This will become a weak point in the DCP. If only about &quot;Managing flooding&quot; - more specifics are required to offer understanding and an extent of infrastructure. (Stagnant water, mossles, drowning of toddlers, pedestrian and bike movements restricted a lot.)</td>
<td>Further detailed planning and design of stormwater infrastructure will be prepared to guide public domain and open space areas. This is being carried out as a separate body of work from the DCP. However the DCP does address stormwater flows on certain affected land within the Park edge precinct.</td>
<td>No change</td>
</tr>
<tr>
<td>A</td>
<td>Rain gardens and pockets gardens are about the only type of gardens that fit narrow lanes across Wickham, detail is needed in the DCP, otherwise gardens will continue to be the weak point?</td>
<td>Rain gardens are used as a means of managing smaller rain events through infiltration of stormwater into the subsoil. Given that the ground water level is relatively high and potentially contaminated within the Wickham area, these may not be the best solution. Further landscape details are within the public domain technical manual</td>
<td>No change</td>
</tr>
<tr>
<td>Submission by</td>
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<td>Planning Response</td>
<td>Resulting Action</td>
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<tr>
<td>A</td>
<td>&quot;Change of Use&quot; for existing buildings these are the brown field sites. What are the planning guidelines for cheap &quot;makeovers&quot;. So far guidelines have no compliance and cumulative impact ignored in the DCP. Why no path? Why no greening? Why no compliance, and to meet set trading hours, there is no compliance?</td>
<td>The draft DCP provides location specific controls predominantly focused on the envisaged built form and other controls related to construction works. Other sections of the DCP will still apply. Proposals for a change of use are required to comply with the provisions of the end use, hence not detailed within DCP unless &quot;Wickham specific&quot;. Public domain requirements are identified within a Technical Manual and implemented as conditions of consent.</td>
<td>No change</td>
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</tbody>
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<p>| B. Submission by Landowner /developer of Wickham | 6.03.01 Key Precincts - B. Village Hub - Future Character - Redevelopment and infill development is envisaged to include terrace style housing, shop top housing and smaller residential apartment buildings up to three storeys in height which incorporate design elements complementary to existing housing stock. As per adopted Wickham Masterplan, Map 15 potential re-development densities, 4 storeys are permissible within the village hub precinct and therefore future character should reflect this. | Noted: As stated the building types nominated reflect the scale of development envisaged within this precinct. | No change |</p>
<table>
<thead>
<tr>
<th>Submission by</th>
<th>Issues Raised</th>
<th>Planning Response</th>
<th>Resulting Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.</td>
<td>6.03.02 General Controls - A. Building Street Setbacks - Figure 6.03 - 8 - Building setbacks - Building setbacks after land acquisition. Where Council identify compulsory land acquisition (for laneways and road widening), some locations do not show minimum building setbacks for new laneways and widened roads post land acquisition.</td>
<td>Where no additional building setback is indicated from the land acquisition the resultant building will not require any setback from the new lot boundary. Note land acquisitions identified are administered through Council's LEP. These are identified as 'voluntary' not 'compulsory' hence Council will only acquire the land when the landowner chooses to sell, transfer title, or redevelop the land.</td>
<td>No change.</td>
</tr>
<tr>
<td>B.</td>
<td>6.03.02 General Controls - B. Side Setbacks - Acceptable Solutions. Within the first 6m from the front boundary, development is setback at least 3m from the side boundary. Beyond this, development may be built to the side boundary (zero setback) for a height not exceeding 6.5m as shown in Figure 6.03 - 09. This is inconsistent with the Apartment Design Guide (SEPP 85 ADG) section 3F Visual Privacy, Objective 3F-1, which allows zero setback to boundary for blank walls, with no height limit specified.</td>
<td>Council's DCP includes additional setback requirements to the minimum requirements specified within the Apartment Design Guide (SEPP 85 ADG). This is to ensure implementation of the desired future character of an area. The DCP setbacks are intended to control building bulk, scale, and to provide opportunities for greening along the streetscape. These controls are not controlling visual privacy hence are not inconsistent with section 3F of the Apartment Design Guidelines as is suggested.</td>
<td>No change</td>
</tr>
<tr>
<td>Submission by</td>
<td>Issues Raised</td>
<td>Planning Response</td>
<td>Resulting Action</td>
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</tr>
<tr>
<td>C. Submission by Urban Development Institute of Australia (UDIA)</td>
<td>Section 5.3 of the Wickham Master Plan identifies that amendments to the NLEP are required to achieve the additional height. To the extent the DCP imposes additional requirements on development, they should not be imposed until there is a clear policy from Council on how the extra height identified in the Wickham Master Plan can be achieved. Until that occurs the draft DCP does not actually implement the Wickham Master Plan as adopted.</td>
<td>The DCP setbacks and other design controls will apply to development proposals regardless of the overall height achieved. While the additional building height may be achieved once the LEP is amended, new development of height less than the potential future maximum will still need to comply with all other controls in order to achieve a consistent outcome especially at the streetscape level.</td>
<td>No change</td>
</tr>
<tr>
<td>C. UDIA NSW urges Council to implement the Wickham Master Plan in its entirety rather than in part, as the draft DCP proposes. Preparing the draft DCP before dealing with how the increased height is to be achieved leads to confusion and inefficient development.</td>
<td>While it may be ideal to implement the entire Wickham Master Plan actions at the same time, this is not practically or feasibly possible to deliver. Council has prioritised the DCP to ensure a consistent approach to setbacks and public domain interface are achieved where land is redeveloped in the meantime.</td>
<td>No change</td>
<td></td>
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<tr>
<td>Submission by</td>
<td>Issues Raised</td>
<td>Planning Response</td>
<td>Resulting Action</td>
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<tr>
<td>C.</td>
<td>UDIA NSW also queries how Council proposes to acquire private land indicated in Figure 6.03 - 6.08 - Building setbacks of the draft DCP. Will this be done by compulsory acquisition? Or is Council proposing to amend Land Reservation Acquisition Maps under Clauses 5.1 and 5.2 of the LEP? If the LEP will be amended, then this is another reason that Council should not adopt the draft DCP until there is a planning proposal at least exhibited that gives effect to the Master Plan.</td>
<td>Acquisitions are implemented through provisions within the LEP. The DCP simply reflects the nominated acquisitions to inform applicants which component of building setbacks will be part of the public domain and which part will remain in private ownerships. Identifying the proposed acquisition areas enables applicants to consider other options such as proposing a potential planning agreement where land is dedicated to Council in exchange for contributions or to achieve other outcomes.</td>
<td>No change</td>
</tr>
<tr>
<td>C.</td>
<td>On the point of the &quot;savings provision&quot;, the draft states that the new DCP will be applied to Development Applications regardless of when they were lodged. We respectfully suggest that the provision is unnecessary.</td>
<td>This is not correct. The draft DCP's saving provisions identify that DAs &quot;lodged but not determined prior to this section coming into effect will be determined taking into consideration the provisions of this section.&quot; The key word here is 'consideration'. Considering the WMP was adopted in November 2017 and the draft controls bring this into effect, it is not unreasonable to expect that any undetermined DA should have considered the WMP or subsequent draft DCP. The wording of this savings provision is also consistent with other sections within Part 6 Locality Specific Provisions, including 6.01 Newcastle City Centre.</td>
<td>No change</td>
</tr>
<tr>
<td>Submission by</td>
<td>Issues Raised</td>
<td>Planning Response</td>
<td>Resulting Action</td>
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<tr>
<td>C.</td>
<td>UDIA NSW strongly urges Council to postpone amendments to the DCP until Council makes clear what it proposes to do about facilitating the extra height identified in the Master Plan, and the process for acquiring private land.</td>
<td>Addressed above</td>
<td>No change</td>
</tr>
<tr>
<td>D. Submission by on behalf of GLOW community group</td>
<td>GLOW provided a detailed submission of written comments to the draft Section 6.03 Wickham of DCP by including comments and suggested modifications. Particular focus of the submission related to development controls applying to the 'Village Hub' precinct, in which the majority of existing residents are located. The main comments are summarised below.</td>
<td>See below for details</td>
<td>NA</td>
</tr>
<tr>
<td>D.</td>
<td>Related sections - suggestion that section 3.02 Single Dwellings, section 3.03 Residential Development, and/or Section 3.10 Commercial Uses 'may' all apply within Wickham and likewise Section 6.03 'may' apply to those sections where development is within the Village Hub precinct of Wickham.</td>
<td>Applicable land use specific provisions under Part 3.00 are already identified as being applicable. This includes both section 3.03 Residential Development, and Section 3.10 Commercial Uses. However these sections only apply where Section 6.03 Wickham does not include specific controls.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Associated technical manuals - These documents will need to be reviewed/updated to reflect the information in the WMP and this DCP.</td>
<td>Noted. This is currently being prepared as a separate piece of work from this DCP.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Additional information - suggest adding wording after &quot;...in order to implement the Wickham Master Plan (2017)&quot; stating &quot;...and to strengthen the livability of Wickham&quot;</td>
<td>Whilst the sentiment of this proposed wording is supported, the reference to the DCP seeking to implement the WMP already implies that this includes the vision and objectives contained within.</td>
<td>No change</td>
</tr>
<tr>
<td>Submission by</td>
<td>Issues Raised</td>
<td>Planning Response</td>
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<tr>
<td>D.</td>
<td>Section 6.3.1 Key Precincts, A. Rail Edge, Acceptable solutions A1 - suggests adding an acceptable solution &quot;c) enhancement of pedestrian movement and safety.&quot;</td>
<td>This would be an objective or performance criteria as it does not provide a solution.</td>
<td>Incorporate wording into performance criteria P1 instead.</td>
</tr>
<tr>
<td>D.</td>
<td>Section 6.3.1 Key Precincts, B Village Hub A3 - questioned why driveway control is not located under section 6.3.2 General Controls.</td>
<td>While a valid point, this DCP is structured to include precinct specific controls up front. As these specific driveway controls only apply to development within the Village Hub precinct they were included within this sub-section.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Section 6.3.1 Key Precincts, C. Harbour Edge submission suggests controls for public access and utilisation of The Tree of Knowledge Park.</td>
<td>The DCP guides development on private land, hence the embellishment of parkland is not subject to the DCP.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Section 6.3.1 Key Precincts, E. Park Edge Submission suggests that picture of precinct does not reflect the setback of the DCP, in particular the 6m setback above 14m and the side setbacks for gardens, etc.</td>
<td>The image Potential future built form of the Park Edge precinct is taken from the 3D model of the Wickham Master Plan. While the built form is indicative only it is based on the building envelopes established for each area on which the controls are based.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Further to the above section - submission suggests specific controls relating to pedestrian and cyclist safety and integration with Wickham Park.</td>
<td>As above</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>6.3.2 General Controls - A. Building street setbacks - submission notes that Section 3.03 “Residential Development”, specifically references Section 6 under front setbacks but Section 3.02 “Single Dwellings” does not.</td>
<td>Single Dwellings are not permissible within the B4 zoning unless developed under existing use rights. Hence only section 3.03 “Residential Development” is relevant in this case.</td>
<td>No change</td>
</tr>
<tr>
<td>Submission by</td>
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<tr>
<td>D.</td>
<td>Further to above - the submission suggests an additional control: &quot;Setbacks are compatible with the intended local streetscape of the Wickham Master Plan.&quot;</td>
<td>DCP controls are drafted as not to require cross-referencing other documentation. The proposed setbacks in Figure 6.03-8 are consistent with the WMP hence this control is not necessary.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Further to above - suggests for Garages and carports to be integrated into a development and do not dominate the streetscape as per section 3.02 &quot;Single Dwellings&quot; and section 3.03 &quot;Residential Development&quot;.</td>
<td>This is addressed in subsection D. Design of Parking Structures.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Further to above - Suggest specific front setback controls for Village hub to be an average of adjoining buildings 40m either side of the site as in section 3.02 &quot;Single Dwellings&quot; and section 3.03 &quot;Residential Development&quot;.</td>
<td>Setbacks are identified in Figure 6.03-8 to reflect the WMP. Setbacks proposed are generally greater than existing to enable opportunities for landscaping on private land given the narrowness of streets, which restrict the opportunity for providing street trees and greening as advocated by the community in preparing the WMP.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Further to above - suggests for Village Hub, first floor, light-weight, cantilevered veranda/balcony extends up to the front boundary.</td>
<td>As noted above, the intent of the front setbacks is to provide opportunities for landscaping and greening due to the narrow streets, particularly within the Village Hub. However there could be opportunities to allow articulation within upper levels having consideration of potential overshadowing and perceived building bulk. Specific control introduced within the Village hub precinct to allow encroachment into the minimum street setback at the first level (i.e. second storey) for 50% of the frontage but only where the encroachment is for private open space such as a veranda, balcony, pergola or deck.</td>
<td></td>
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<tr>
<td>D.</td>
<td>6.3.2 General Controls, B Side Setbacks - suggests adding setbacks to rear of properties consistent with the format in section 3.02 “Single Dwellings” and section 3.03 “Residential Development”</td>
<td>Rear setback will be dependent on controls applying to building type and/or land use.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>Further to the above - suggests bulk and scale controls specific to Village Hub.</td>
<td>Bulk and scale are controlled by FSR and building height, which are both LEP standards rather than development controls.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>6.3.2 General Controls, C. Property access and driveway crossings - suggests controls referring to sight lines and Australian Standards</td>
<td>Suggested controls will be achieved through application of front building setbacks.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>6.3.2 General Controls, D. Design of parking structures - submission suggests variations for development in Village Hub with respect to ceiling heights.</td>
<td>Variation to controls would only be considered for smaller scale development not including common parking areas.</td>
<td>Rename heading to 'Design of parking structures' to differentiate from individual garaging of dwelling houses.</td>
</tr>
<tr>
<td>D.</td>
<td>Further to above - suggests greater bicycle parking requirements from current DCP rate of 1 per 10 units.</td>
<td>Bicycle parking spaces for residential development is actually 1 per unit. The 1 per 10 rate is additional spaces for visitor bicycle parking, which is considered adequate.</td>
<td>No change</td>
</tr>
<tr>
<td>D.</td>
<td>6.3.2 General Controls, F. Addressing the street - submission suggests including additional design controls as identified in the WMP</td>
<td>Additional requirements required to better reflect envisaged character along streetscapes.</td>
<td>New 'Section 6.03.03 Urban Design A. Interface to the street' provides greater guidance to treatment of interface between development to public domain areas.</td>
</tr>
<tr>
<td>D.</td>
<td>GLOW also support Wickham to be incorporated into the City Centre Public Domain Technical Manual</td>
<td>Noted</td>
<td></td>
</tr>
<tr>
<td>Submission by</td>
<td>Issues Raised</td>
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<tr>
<td>E. The Hunter Regional Committee of the National Trust of Australia (NSW)</td>
<td>Apart from identifying heritage items listed in Newcastle LEP, heritage schedule and listings on the State Heritage Register, issues related to heritage in one of our oldest suburbs were absent.</td>
<td>Heritage matters are already addressed within Part 5 of the DCP and in Council’s LEP.</td>
<td>No change</td>
</tr>
<tr>
<td>E.</td>
<td>6.03.01, Key Precincts B, “Village Hub” - the character of this precinct is heritage significant and it contains buildings of potential local heritage significance. The precinct may merit consideration as a heritage conservation area.</td>
<td>The DCP ensures infill development within the Village Hub precinct is sympathetic to the character and scale of the existing built form. Where development adjoins a heritage item, additional consideration is already required regardless of this DCP.</td>
<td>No change</td>
</tr>
<tr>
<td>E.</td>
<td>We believe that a heritage study of this precinct is long overdue (the City Wide Heritage Study dates back to 1996). We would like to suggest a heritage study of the Wickham area, and in particular, the area covered by the Wickham Master Plan be made for consideration before undertaking future amendments to Newcastle LEP 2012.</td>
<td>Council has prepared a Planning Proposal for the Wickham Area which includes the provision of a new listing within the LEP over part of the area identified as the Former Bullock Island Rail Corridor.</td>
<td>No change</td>
</tr>
<tr>
<td>E.</td>
<td>Bullock Island Rail Corridor: We suggest that ways of interpreting and retaining appropriate relics/artefacts on the former corridor be investigated.</td>
<td>Addressed above.</td>
<td>No change</td>
</tr>
</tbody>
</table>
ITEM-104 CCL 23/10/18 - ADOPTION OF CITY MARKETING AND ENGAGEMENT STRATEGY

REPORT BY: STRATEGY AND ENGAGEMENT
CONTACT: INTERIM DIRECTOR STRATEGY AND ENGAGEMENT / MANAGER MAJOR EVENTS AND CORPORATE AFFAIRS

PURPOSE

To adopt the 2018 - 2021 City Marketing and Engagement Strategy following public exhibition.

RECOMMENDATION

1 Council adopts the 2018 - 2021 City Marketing and Engagement Strategy as at Attachment A.

KEY ISSUES

2 City Marketing and Engagement Strategy (Strategy) is to set the objectives, priorities and actions to achieve our corporate goals relating to communications, marketing and community engagement.

3 At the Ordinary Council Meeting held on 28 August 2018 Council resolved to place the draft 2018 - 2021 City Marketing and Engagement Strategy on public exhibition for 28 days.

4 During the exhibition period City of Newcastle (CN) received 22 electronic submissions from the public. A summary of the submissions received are outlined in Attachment B. No changes have been made to the Strategy, however the feedback supports the Strategy’s objectives and indicates opportunities to continue to build trust and communicate more effectively.

FINANCIAL IMPACT

5 There is no cost to adopt the 2018 - 2021 City Marketing and Engagement Strategy.

6 Strategy actions and initiatives will be implemented within operational and project budgets.

COMMUNITY STRATEGIC PLAN ALIGNMENT

7 Inclusive community

   (i) 4.1b Support initiatives and facilities that encourage social inclusion and community connections.
8  **Smart and Innovative**

(i) 6.1a Recognise and strengthen Newcastle's role as a metropolitan capital and hub for education, health, tourism, creative, port and logistics industries.

(ii) 6.2a Support and advocate for innovation in business research activities, education and creative industries.

(iii) 6.3 A thriving city that attracts people to live, work, invest and visit.

9  **Open and Collaborative Leadership**

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

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

(iii) 7.3b Provide clear, consistent, accessible and relevant information to the community.

**IMPLEMENTATION PLAN/IMPLICATIONS**

10 Major Events and Corporate Events Team will work closely with the organisation to implement all actions within the Strategy over the next four years.

**RISK ASSESSMENT AND MITIGATION**

11 The Strategy ensures that Councillors and Council Officers supports its role and purpose as set out in the Local Government Act 1993 (NSW).

**RELATED PREVIOUS DECISIONS**

12 At the Ordinary Council Meeting held on 28 August 2018 Council resolved to place the draft City Marketing and Engagement Strategy on public exhibition for 28 days.

**CONSULTATION**

13 A Councillor workshop was held on 14 August 2018.

14 The public exhibition period 30 August to 27 September 2018 provided an opportunity for feedback and submissions regarding the Strategy to be made online and by post.

15 The Strategy was promoted in our social media channels, website, hard copy flyers, posters, internal and external e-newsletters and in paid statutory advertising.
BACKGROUND

16 Approximately 2,700 residents participated in the Newcastle 2030 Community Strategic Plan community engagement program. Outcomes from this program indicate that community engagement is seen as a vital function and an integral part of CN demonstrating open and transparent governance.

17 CN’s community surveys (2014 and 2016), completed by more than 1,000 residents, identified involvement in decision making and information about CN activities as high priority areas.

18 Two surveys completed with over 600 residents in 2018 indicated we could improve the recognition of the positive experiences we are providing to our community through our brand.

OPTIONS

Option 1

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

Option 2

20 Council does not adopt the recommendation as at Paragraph 1. This is not the recommended option.

REFERENCES

ATTACHMENTS

Attachment A: 2018 - 2021 City Marketing and Engagement Strategy

Attachment B: Public Exhibition Summary Report

Distributed under separate
ITEM-105 CCL 23/10/18 - ENDORSEMENT OF PLANNING AGREEMENT - 5 HALL STREET MARYVILLE

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

PURPOSE

This report seeks Council's endorsement of the Planning Agreement for 5 Hall Street Maryville.

RECOMMENDATION

1 Council resolves to:
   i) Endorse the Planning Agreement - 5 Hall Street Maryville (Attachment A).
   ii) Authorise the Chief Executive Officer to execute the Planning Agreement.

KEY ISSUES

2 At the Ordinary Council Meeting held on 28 August 2018, Council resolved to place the draft Planning Agreement for DA2016/01024 on public exhibition for 28 days. The draft Agreement was exhibited from Monday 3 September 2018 to Tuesday 2 October 2018 and one submission was received.

3 The submission received highlighted the importance of retaining the mangroves in front of the development, raised concern with proposed changes to the existing shared path and that the developer should be paying for the works proposed under the Planning Agreement as well as paying development contributions.

4 Through the assessment of DA2016/01024, advice was sought from the NSW Office of Water and NSW Department of Fisheries. Both agencies advised that they had no objection to the development as there is to be no works in the riparian zone, including no removal of aquatic vegetation. The plans approved as part of DA2016/01024, show a mangrove protection zone to ensure the existing mangroves are retained and protected.

5 The Planning Agreement requires the construction drawings to be approved by CN and this process will take into consideration the retention and protection of mangroves along Throsby Creek.
6 The submission raised concern with the function of the existing shared path being changed to a cycleway and pedestrians being forced to walk on the proposed footpath rather than the shared path. The existing shared path is proposed to be widened to 3m as well as the construction of an additional pedestrian path (width varies between 1.8m and 2.4m). The function of the shared path is not proposed to change and therefore pedestrians will be able to use the shared path or pedestrian path.

7 The submission also sought clarification on how the actions of the Strategic Position Paper Low Lying Areas City of Newcastle 2017 are being considered in the design of the proposed works.

8 The Strategic Position Paper Low Lying Areas City of Newcastle 2017 was adopted by Council to protect low lying areas from future flood risk associated with climate change. The actions (phase 1-6) are only triggered if increments of sea level rise are recorded. Phase 1 was triggered upon adoption of the strategic position paper and sea level and groundwater level monitoring is being undertaken.

9 A sea level increase of 0.3m has been identified as the tipping point for the need to have levees implemented to a height of 2.5m above mean sea level. Construction of these levees is anticipated to commence when 0.2m sea level rise is experienced, based on the latest science this is predicted to occur around 2050. As 0.2m of sea level rise has not yet been experienced, the reconstruction of the shared pathway does not propose increasing the height along this section of Throsby Creek.

10 The submission noted that the developer should not be able to choose where their development contributions are spent and that the works proposed under the Planning Agreement should be paid for by the developer as well as the payment of development contributions.

11 The provision of the shared path and walkway was agreed by CN and can only be provided through a Planning Agreement with the developer. Planning Agreements provide an opportunity for consent authorities and developers to negotiate a voluntary agreement for a variety of projects including the provision of works in lieu of the payment of development contributions.

12 The works proposed under the Planning Agreement total approximately $277,500, which significantly exceeds the development contribution required to be paid to CN.

FINANCIAL IMPACT

13 The Planning Agreement requires the works to be completed by the developer in lieu of the payment of development contributions. The Developer is required to maintain the works for a 12-month period, as well as the ratification of any defects identified by CN.

14 The implementation and monitoring of the Planning Agreement by CN staff will be undertaken within the current allocated work program and budget.
COMMUNITY STRATEGIC PLAN ALIGNMENT

15 The 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

16 The 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.

17 The Planning Agreement includes a process for resolving disputes and a requirement that CN will not issue the Final Occupation Certificate for the development unless the works have been completed to CN's satisfaction.

RISK ASSESSMENT AND MITIGATION

18 The negotiation and preparation of the draft Planning Agreement is consistent with CN's Planning Agreement Policy which can be found at [www.newcastle.nsw.gov.au/Newcastle/media/Documents/Strategies,%20Plans,%20and%20Policies/Policies/Planning_Agreements_-_2014_Policy.pdf](http://www.newcastle.nsw.gov.au/Newcastle/media/Documents/Strategies,%20Plans,%20and%20Policies/Policies/Planning_Agreements_-_2014_Policy.pdf). This Policy was adopted to regulate the way in which CN will consider, accept and implement offers made by developers to enter into Planning Agreements.

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

RELATED PREVIOUS DECISIONS

20 At the Ordinary Council Meeting held on 28 August 2018, Council resolved to exhibit the draft Planning Agreement for 28 days.
CONSULTATION

21 The draft Planning Agreement was publicly exhibited from Monday 3 September 2018 to Tuesday 2 October 2018. One submission was received.

BACKGROUND

22 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 CN a development contribution of $82,770.

23 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. CN 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.

24 The Planning Agreement requires the developer to construct the following works:

i) Demolish, remove and replace the existing 2.5m wide shared path with a new concrete 3.0m wide shared path along the length of the development boundary, adjacent to Throsby Creek.

ii) Construct a dedicated walkway adjacent to the shared path including hand rails, seating and landscaping.

25 The works are to be completed on land owned by Hunter Water, which is under the care and control of CN. Hunter Water’s approval has been sought and obtained through the development assessment process.

OPTIONS

Option 1

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

Option 2

27 Council resolves not to endorse the Planning Agreement. This will not allow the Developer to replace the shared pathway and construct a dedicated walkway adjacent to the shared path including hand rails, seating and landscaping in lieu of the payment of the s7.12 levy. This is not the recommended option.
REFERENCES

ATTACHMENTS

Attachment A: Planning Agreement - 5 Hall Street, Maryville
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) Emailed 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: sturkington@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

(Clauses 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>
</tr>
</thead>
<tbody>
<tr>
<td>Item</td>
<td>Public Purpose</td>
<td>Manner &amp; Extent and Key Elements</td>
<td>Timing</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Cycleway/walkway</td>
<td>Demolish, remove and replace existing 2.5m cycleway with new concrete 3.0m cycleway along foreshore (approximately 350 lm x $250)</td>
<td>Prior to occupation of stage 3</td>
<td>$87,500.00</td>
</tr>
<tr>
<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 206 lm x $950)</td>
<td>Prior to occupation of stage 3</td>
<td>$190,000.00</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$277,500.00</td>
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ITEM-106  CCL 23/10/18 - STEVENSON PARK CONCEPT LANDSCAPE MASTERPLAN

REPORT BY:  CITY WIDE SERVICES
CONTACT: INTERIM DIRECTOR CITY WIDE SERVICES/ ACTING MANAGER PARKS AND RECREATION

PURPOSE

To seek Council's approval to place the draft City of Newcastle Stevenson Park Masterplan on public exhibition.

RECOMMENDATION

1 Council resolve that the Stevenson Park Masterplan (Masterplan) Attachment A be placed on public exhibition for a period of 21 days.

2 Following the exhibition period there will be a workshop for Councillors and a further report back to Council.

KEY ISSUES

3 Stevenson Park Mayfield West is a key sporting and recreation reserve within the City. The reserve is well used by local sporting clubs and associations, schools, and it is the regional complex for softball.

4 Stevenson Park Masterplan was last updated in 2000. The review process has enabled CN staff to work with user groups and the local community to determine future recreation opportunities.

5 A key priority for the local community is creating improved passive recreation opportunities within the reserve including development of a new playspace. The existing playground is nearing the end of useful life.

6 CN will shortly commence preparation of a strategic sports plan examining current and future sports facility provisions across the City. On completion of this draft plan by mid 2019 the Masterplan may be further revised to incorporate any relevant recommendations. The sports plan will involve consultation with all sporting clubs and associations to examine their specific requirements for the future development of their sport.

FINANCIAL IMPACT

7 Exhibition of the draft Masterplan will have no additional impact in the short term. Funding to implement works identified through the Masterplan will be requested through the appropriate budget processes. CN will apply for funding through the NSW Inclusive Playspace grants when applications are advertised.
8 Funding of $150,000 has been allocated in 2018/19 for a playground upgrade at Stevenson Park to enhance the play opportunities. CN will seek additional grant funding to enable further enhancement.

COMMUNITY STRATEGIC PLAN ALIGNMENT

9 The draft CN Masterplan is in alignment with three strategic directions:

Vibrant, Safe and Active Public Places

3.1a Provide quality parkland and recreation facilities that are diverse, accessible and responsive to changing needs

Inclusive Community

4.1b Support initiatives and facilities that encourage social inclusion and community connections.

4.1c Improve, promote and facilitate equitable access to services and facilities

4.2c Promote recreation, health and wellbeing programs

Open and Collaborative Leadership

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

IMPLEMENTATION PLAN/IMPLICATIONS

10 The actions contained within the draft CN Masterplan provide a body of work for CN to develop additional community facilities including an inclusive playground opportunity.

11 Partnerships will be explored with local business, community groups and the S.355 park committee for funding opportunities.

RISK ASSESSMENT AND MITIGATION

12 There is no foreseen risk in exhibiting the draft CN Masterplan.

RELATED PREVIOUS DECISIONS

13 At the Ordinary Council Meeting held on 24 October 2017, Council resolved to upgrade the Stevenson Park Masterplan, in consultation with the Friends of Stevenson Park, local community and sporting groups, and to commit funding of $150,000 in the 2018/19 delivery plan for upgrading of the playground.

CONSULTATION

14 A participatory approach to engagement was designed to ensure diverse input from users of the park.
15 There was extensive community engagement throughout the planning process, and a high level of the communities’ interest.

16 A range of engagement methods were used to capture feedback from a diverse range of park users ranging from school students through to adults and key stakeholders. A summary is provided below, with the full report engagement included in Attachment B.

<table>
<thead>
<tr>
<th>Phase 1 design development (7 May - 30 May 2018)</th>
<th>Method</th>
<th>Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online survey</td>
<td>80 surveys complete</td>
<td></td>
</tr>
<tr>
<td>Community design workshop</td>
<td>Over 50 attended</td>
<td></td>
</tr>
<tr>
<td>Student design workshop</td>
<td>Over 100 students participated</td>
<td></td>
</tr>
<tr>
<td>Online interactive map</td>
<td>369 unique visitors and 153 comments</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Phase 2 design deliberation (14 June - 2 July 2018)</th>
<th>Method</th>
<th>Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibition of three concepts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Online interactive concept design feedback</td>
<td>31 playground surveys completed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>109 comments</td>
<td></td>
</tr>
<tr>
<td>Design feedback park drop in session</td>
<td>85 feedback markers received</td>
<td></td>
</tr>
<tr>
<td>Sporting group stakeholder meeting</td>
<td>10 attendees representing 4 sports</td>
<td></td>
</tr>
</tbody>
</table>

**BACKGROUND**

17 Stevenson Park Mayfield West is managed by a S.355 Parks Committee.

18 The existing Masterplan was prepared in 2000 as part of the development of the Sportsland Plan of Management.

**OPTIONS**

**Option 1**

19 The recommendation as at Paragraph 1 – 2. This is the recommended option.

**Option 2**

20 Do not exhibit the draft Stevenson Park Masterplan. Failure to finalise the planning for the passive recreation area will also delay delivery of the planned playground upgrade in 2018/19. This is not the recommended option.
REFERENCES

ATTACHMENTS

Attachment A: Draft City of Newcastle Stevenson Park Masterplan
Distributed under separate cover

Attachment B: Stevenson Park Community Engagement Report
Distributed under separate cover
NOTICES OF MOTION

ITEM-27 NOM 23/10/18 - VERGE GARDENS

COUNCILLORS: D CLAUSEN, M BYRNE, C DUNCAN, J DUNN, N NELMES, P WINNEY-BAARTZ AND E WHITE

PURPOSE

The following Notice of Motion was received on 11 October 2018 from the abovenamed Councillors.

MOTION

That Council:

1 Reiterate its commitment to urban greening, including its targets to increase the urban forest and promote community sustainability
2 Notes the approach adopted by a number of major Australian local authorities that allow residents to establish verge gardens, with policies/guidelines that limit and remove adverse impacts on neighbors and the broader community
3 Review best practice, and develop a draft Verge Garden Policy and any required guidelines for Council’s consideration.

BACKGROUND

The City of Newcastle has long been a leader in local government policies that promote urban greening, including an Urban Forest Policy.

These Policies are advanced and have been developed in an iterative approach to prevent negative impacts on residents and utility providers, while maximizing the benefits of ecosystem services (such as reduced urban heat island, biodiversity improvements and carbon sequestration), and to improve amenity.

To date, the policies particularly focus on larger natural assets such as street trees.

While it entirely appropriate for the City to maintain tight regulatory control over these larger natural assets, a grey area presently exists when considering verge vegetable and other low impact gardens. Currently, the City’s policies notionally prohibit residents from planting low impact verge gardens (such as verge vegetable gardens).
Nationwide, there are growing calls from residents to allow low impact verge gardens. A number of local authorities have responded with clear policies and guidelines for residents which prevent negative impacts on the broader community and underground/overhead utilities (see attachments).

This motion calls for the City to consider this best practice and develop appropriate draft Policy/Guideline documentation for implementation in Newcastle.

ATTACHMENTS

Attachment A  Fremantle Verge Garden Policy

Attachment B  Brisbane Verge Garden Guidelines

Attachment C  Sunshine Coast Planting on Road Verges Policy
ITEM-28 NOM 23/10/18 - SKATE BOWL ON SOUTH NEWCASTLE BEACH

COUNCILLORS: J CHURCH, K ELLIOTT, A RUFO AND A ROBINSON

PURPOSE

The following Notice of Motion was received on 11 October 2018 from the abovenamed Councillors.

MOTION

That City of Newcastle

1. Investigates changes to the design of the Newcastle Beach infrastructure Project which would remove the inclusion of a skate bowl planned for construction on South Newcastle Beach

2. Reconvenes the Skate Park CRG and invites members of the local surfing community and local residents to attend and consult.

3. Seeks a second opinion from suitably qualified engineers about the environmental impacts of the proposed skate bowl on the beach and coastline and the ability of the proposed Skate Bowl to withstand storm events.

4. Provides councillors and the community with an estimate of the annual operating and maintenance costs for the Skate bowl.

5. Agrees to submit the project to a formal DA process to allow written submissions from the community and a public voice hearing should that be requested.

BACKGROUND

In June 2018 final designs for an upgrade to South Newcastle Beach including a new skate park and bowl were unveiled.

This is a part of an $11 million precinct redevelopment called the “Newcastle Beach Community Infrastructure Renewal Project” which has attracted $5 million in funding from the NSW Government.

Since then there has been growing concern from local residents and the surfing community who have raised issues around the removal of sand from the beach and the impact on the coastline of a concrete structure which protrudes at least 18 metres from the existing sea wall.

They have also raised concerns about maintenance of the skate bowl in a highly exposed, sandy and salty environment.
This motion asks council to examine alternative plans to the Skate Bowl, inform the community about environmental impacts and forecast the ongoing maintenance costs to ratepayers.

It also calls for the project to be submitted to the usual rigour of a formal DA process that would allow for public submissions and a public voice hearing should that be requested.

**ATTACHMENTS**

Nil
REPORT ON NOTICE OF MOTION - NOM 23/10/18 - SKATE BOWL ON SOUTH NEWCASTLE BEACH

REPORT BY: INFRASTRUCTURE AND PROPERTY

CONTACT: DIRECTOR INFRASTRUCTURE AND PROPERTY

DIRECTOR COMMENT

The design of the Newcastle Beach infrastructure project's skate park and bowl was developed after thorough consultation with the Newcastle skating community with the objective to cater for the maximum number and type of users. The members of the focus group were selected to ensure that all aspects of skateboarding were considered, including wheelchair use, and family friendly facilities which complemented existing facilities at Empire Park.

The modification of the current design to remove the bowl will result in intermediate level bowl-riders not being catered for. Another option of positioning the bowl within the current sea-wall alignment will compromise the street skating facility and beginner’s area. One of the primary concerns from the skateboarding community is that the design will be compromised. This occurred during the Empire Park project, and the resulting facility will not be fit-for-purpose.

A significant change to the design, such as removal of the bowl, will also jeopardise the current State Government grant funding, as the limitations of a scaled-back design will result in the project not achieving the projected social and economic benefits stated in the grant application. If the Restart NSW offer is withdrawn, City of Newcastle (CN) will not have the capacity to deliver the project. Success of future funding opportunities, for this and other projects, may also be risked if the current funding is withdrawn.

Investigating changes to the design will result in an estimated $75,000 in additional consultancy fees including Skate Park design, landscape architecture, civil and structural engineering, and result in a delay of at least three months to allow for the focus group to reconvene (this is a conservative estimate based on the cost of producing a concept design only). Should an alternative design be adopted, the cost of re-documenting the project would be closer to $300,000 and delay the project by at least an additional six months. This would again place the current grant funding at risk, as well as delay the remaining Bathers Way projects.

The Skate Park Community Reference Group is a focus group specific to the design of elements of the skate park, which relies on the experience and expert knowledge of skate boarders. It is not appropriate, or standard practice, to invite individuals without intimate knowledge of skate park design and use to the focus group. Due to the specificity of the subject matter, the focus group is facilitated by the Skate Park design consultant – reconvening the group to revisit the design would incur additional costs from the consultant team and would not add any value to the process by including individuals who do not have the necessary knowledge to comment on the design.
A broader Community Reference Group for Bathers Way has been established, and representatives from the board riders, bowl-riders and street skaters have been invited to attend the next meeting to be held later this month.

Additional engineering reports are unlikely to yield a different outcome, as the same data and modelling information would be used. An additional report would cost between $25,000 to $50,000. A review of the proposed structural design would need be undertaken by a structural engineer, this would incur an additional cost of around $10,000.

The annual operating and maintenance costs can be estimated if required, however based on the maintenance requirements of other concrete structures recently constructed at Merewether (sea wall and Baths promenade) and South Newcastle (sea wall), the costs would be minimal. Australian Standards apply to structures and materials used in marine environments to ensure durability, and all structures are designed for a minimum 50 year design life. Comparatively, sand build up at the Empire Park skate facility was a perceived problem which has not eventuated. General parks operational maintenance crews undertake general maintenance for this area and other operational maintenance such as garbage collection and graffiti removal are already accommodated in operational budgets.

As a comparison, some costs ($31,000) associated with maintaining the Empire Skate Park facility have been associated with minor repairs and resurfacing of the bowl surface for events.

A development application would not be accepted if it is not required, as the processing and determination of such an application would be of no effect, with such a determination not being able to be lawfully acted upon. The required planning pathway, as dictated by the applicable planning law, is not a discretionary matter.

It is important to understand the time and cost implications of revisiting the design, given that construction documentation is almost complete. Due diligence has been undertaken during the design, both in relation to the potential impacts of the design on the coastal environment and the impacts of the environment on the structure. There are also implications on CN's reputation with consultants, and implications relating to current and future funding if the project cannot meet the program or realise the benefits stated in the successful grant application.

It is also worth noting that both Department of Primary Industry (Lands) and the NSW Office of Environment and Heritage have been in recent contact with our Senior Project Planner following complaints from the South Newcastle Board Riders, and neither agency raised any concern with the proposal.

RECOMMENDATION

1. Notes that the Newcastle Beach Infrastructure Project’s Skate facility has been developed in consultation with Newcastle’s skateboarding community, and that the facility is designed to cater for a broad range of skaters. The focus group was specific to skating only and inclusion of board riders, or the wider community would not value add to this design process;
2. Notes that the structure is designed in accordance with Australian Standards for coastal requirement, and that the costs for maintenance activities at this location are within the City’s operational budgets; and

3. Amends the proposed Notice of Motion as follows:

   i) Item 3 - Commits to a review and finalisation of the coastal engineering report to ensure that the proposed skate bowl does not negatively impact on the beach and coastline, and can adequately withstand storm events; and

   ii) Item 5 - Commits to the review of the required planning pathways for the proposed development noting the commencement of the *Coastal Management Act 2016*. 
ITEM-29 NOM 23/10/18 - WORKS PROGRAM FINANCIAL DETAILS

COUNCILLORS: K ELLIOTT, J CHURCH, A RUFO AND A ROBINSON

PURPOSE

The following Notice of Motion was received on 11 October 2018 from the abovenamed Councillors.

MOTION

That City of Newcastle:

1 Reinforce its commitment to be open and transparent, in all its operations, especially in sharing with ratepayers how their rates are being spent.

2 In line with Part A, return to publishing a greater level of detail in Capital Works and Operational budgets. The level of detail to be similar to that shown in the 2015/16 Operational Plan. (See pages 91 to 102 in the document accessed through this link)

BACKGROUND

City of Newcastle typically budgets to spend funds on up to 500 different projects in Works Programs. Prior to the last couple of years, the annual Operational Plan published full details of all the projects within the plan, as well as a detailed breakdown of operational revenue and expenditure by business unit.

For example, in the 2015/16 Operational Plan, for which a link is provided above, every project in the Council’s Works Program, including the budget allocation, is included in the document. This is typical of the detail provided in Operational Plans for many years prior to 2015/16. Quarterly Reviews of budget performance also included information on activity on each of these projects and noted, in detail, any changes to the Works Program going forward.

In contrast, in the current 2018/19 Operational Plan, the public is provided with a two-page high level summary of categories of expenditure. There is no way in determining the actual projects on which funds are to be spent from this limited information. Considering $100million is being committed to the Works Program, this is insufficient information to enable Councillors, and the public to understand, and monitor, where the funds are being spent.

In past years Councillors, and the community, could see the projects planned for their ward, and suburb, and therefore determine whether ratepayers’ funds were being equitably shared across the LGA. Quarterly Reviews enabled the community to see Council’s performance against the program, and which projects were completed, started, or deferred.
Similarly, in the 2015/16 Operational Plan, pages 41 to 92 are devoted to detailed budgets and KPI’s for the Operational Expenditure for every Business Unit. In the 2018/19 Operational Plan, all this information is condensed into a single seven-line table on page 54.

As the budgets are already prepared by staff to the level of detail requested, the incorporation into the Operational Plan will have no additional cost to City of Newcastle.

The community has an expectation, and a right, to be informed as to how Council is spending $340 million of ratepayer’s money in much greater detail than is currently the case.

ATTACHMENTS

Nil
REPORT ON NOTICE OF MOTION - NOM 23/10/18 - WORKS PROGRAM
FINANCIAL DETAILS

REPORT BY: GOVERNANCE

CONTACT: DIRECTOR GOVERNANCE

DIRECTOR COMMENT

City of Newcastle’s (CN’s) Our Budget (the Annual Budget) provides a summary of the operating position of the organisation (page 52-54) including a high-level analysis of operating income and operating expenditure.

CN’s Our Budget provides a summary of the $100 million 2018/19 Works Program (page 55-56) as well as highlights of the program expenditure on new assets, asset renewal and assets funded by the 2012 Special Rate Variation (SRV) (page 57-60). Further details of the $100 million works program are available online by CN’s monthly city works updates [www.newcastle.nsw.gov.au/Council/News/Projects-Works/City-works-update](http://www.newcastle.nsw.gov.au/Council/News/Projects-Works/City-works-update).

CN’s Financial Reporting Framework was adopted by Council on 25 September 2018 and comprises the following for each financial year:

i) An executive monthly performance report for July to May no later than one month after the month being reported.

ii) A quarterly budget review statement for September, December and March no later than two months after the end of each quarter.

iii) A preliminary end of year financial position in August.

iv) Audited annual financial statements in October.

As part of the executive monthly performance report Council receives a detailed attachment of the financial performance of every service unit and a works program summary with YTD Budget and Actual results. This is a public document accessible via the monthly Ordinary Council Meeting Agenda.

Consistent with standard business practices, CN makes use of competitive tender processes to procure major goods and services. The publication of detailed project budgets would reveal how much CN is willing to pay for works within this program. Providing potential tenderers with information on the budget allocation for a project reduces competition, and limits CN’s ability to secure prices that reflect best value for ratepayers and residents.

It should also be noted that the estimated delivery dates for individual projects within the works program will vary. This is influenced by a number of factors including inclement weather, contractor availability, resourcing demands and program priorities.
Subsequently, and in order to support the forecast budget surplus, quarterly reviews will result in a number of projects being brought forward while others may be pushed back.

As part of the 2019/20 Budget it is proposed that a detailed list of all 2019/20 community facing projects be included as an appendix to the document. The list of projects will identify proposed projects estimated to be funded during the financial year.

**RECOMMENDATION**

1. Council and the community will continue to receive YTD Budget to Actual results for all service units as part of the executive monthly performance report in accordance with the Financial Reporting Framework.

2. CN will continue to provide online monthly city works updates for the 2018/19 works program to inform Council and the community of works scheduled to commence and upcoming in that month.

3. A list of community facing projects in the 2019/20 works program will be included as an appendix to the 2019/20 budget document which will identify projects proposed to receive funding during the financial year.

4. CN will provide a quarterly update of the 2019/20 works program to Council and the community via its website.
ITEM-30 NOM 23/10/18 - AIRBNB

COUNCILLOR: K ELLIOTT

PURPOSE

The following Notice of Motion was received on 11 October 2018 from the abovenamed Councillor.

MOTION

That City of Newcastle:

A Write to the NSW Minister for Planning and Minister for Better Regulation, acknowledging the changes to planning rules regarding short term rental accommodation and stating the important and appropriate role that Councils will play in managing the impacts in their local communities.

B Write a submission to the NSW Government during the public exhibition period outlining our concerns at the impact on neighbourhoods and supporting a reduction in the number of nights for premises where no host is present.

C Decreases the 365-day threshold for exempt development to 180 days per year where the host is not present and advise the NSW Department of Planning of this decision within eight weeks of the exhibition period which commenced on October 5, 2018. In order protect the quiet amenity of residential neighbourhoods.

BACKGROUND

On 5 June 2018, the Minister for Planning and the Minister for Better Regulation and Innovation announced a whole–of–government framework for STRA in New South Wales.

This is currently on public exhibition for comment.

The plan also includes changes to the Strata Schemes Management Act, which will allow owners corporations to adopt a by-law, with a 75 per cent majority, preventing short-term lettings in their block if the host does not live in the unit they are letting out.

A mandatory Code of Conduct for online accommodation platforms, letting agents, hosts and guests will be introduced to address impacts like noise levels, disruptive guests and effects on shared neighbourhood amenities.

The Code will also include a new dispute resolution process to resolve complaints, and NSW Fair Trading will have powers to police online platforms and letting agents. Minister for Planning and Housing Anthony Roberts said new state-wide planning rules would also come into force, including:
• Allowing short-term holiday letting as exempt development 365 days per year when the host is present;
• When the host is not present, a limit for hosts to rent out properties via short-term holiday letting of 180 days in Greater Sydney, with 365 days allowed in all other areas of New South Wales;
• Councils outside Greater Sydney having the power to decrease the 365-day threshold to no lower than 180 days per year; and
• Certain planning rules will apply to properties on bushfire prone land.

Councils outside Greater Sydney can decide if permitting short-term holiday letting for the entire year is acceptable for their local communities.

Under the policy, STRA will be permissible in areas outside Greater Sydney for 365 days per year. However, councils outside of Greater Sydney will have the option to reduce the number of days STRA can occur from 365 days, when the host is not present to no lower than 180 days, based on local needs. Councils seeking to reduce the number of days are invited to provide an expression of interest to the Department of Planning and Environment within 8 weeks of the exhibition commencing. If a council LEP does not amend the day threshold, the per annum state-wide policy will apply.

Impact on Newcastle neighbourhoods

The impacts on neighborhoods in Newcastle of visitors residing in short term rental accommodation in the “share economy: when the host is not present has been steadily increasing according to anecdotal information received from constituents.

Some constituents have noted that there are parties late at night on weekdays, alcohol-fueled poor behaviour, unacceptable noise from revelers, and a general lack of respect for the amenity of local neighbourhoods.

This has led to one family relocating their children each weekend to avoid exposing them to lewd acts and drunken, sometimes violent behaviour on an adjacent balcony by “patrons” of a house let through an online booking engine.

 Constituents have questioned why it is that Councils have zonings for tourist accommodation and yet they are subjected to tourists or visitors in residential neighborhoods where hotels or similar accommodation would not be permitted.

In order to protect the amenity of our neighborhoods, it is recommended that Council reduce the days available for STRA to 180 when the host is not present.

This will not affect hosts who are present for renting spare rooms or outbuildings for 365 days when they are present.

ATTACHMENTS

Attachment A: NSW Government / Planning and Environment - Short-term Rental Accommodation Planning Framework
Attachment A

NSW Planning & Environment

Explanation of Intended Effect

Short-term Rental Accommodation Planning Framework

October / November 2018
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Explanation of Intended Effect

This Explanation of Intended Effect (EIE) has been prepared according to Section 3.30 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979).

It is presented in six parts:

- Part 1 – Executive Summary
- Part 2 – Context
- Part 3 – Planning Context
- Part 4 – Proposed Changes to the Planning System
- Part 5 – Have Your Say
- Part 6 – Appendices
**Part 1 – Executive summary**

### 1.1. Background

Short-term rental accommodation (STRA) has been carried out in New South Wales (NSW) for many years and has grown rapidly with the development of online platforms and the sharing economy. The activity increases tourist accommodation options, contributes to household income and brings wider tourism benefits. However, some communities report impacts on amenity, parking and housing availability.

In 2015, the NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the Adequacy of the Regulation of Short-Term Holiday Letting in NSW. The Committee published its report and recommendations in 2016. The recommendations were mostly supported by the NSW Government and an Options Paper was released in 2017. The Options Paper, publicly exhibited between 21 July and 31 October 2017, sought feedback on regulatory approaches to STRA and attracted almost 8,000 submissions.

The submissions, received in response to the Options Paper, have helped inform a whole of Government policy for the regulation of STRA in NSW. On 3 June 2018, the NSW Government announced a framework that strikes a balance between supporting the economic value of the industry and managing impacts on the community. The framework includes state-wide planning controls and a mandatory Code of Conduct for online accommodation platforms, letting agents, hosts and guests, which will address impacts like noise levels, disruptive guests and effects on shared neighbourhood amenities. The framework will be implemented through amendments to planning instruments, and strata and Fair Trading legislation.

### 1.2. This document

This Explanation of Intended Effect (EIE) relates to proposed amendments to the NSW planning system, as part of the whole of Government framework for STRA. It outlines proposed amendments to the Standard Instrument (Local Environmental Plans) Order 2006 (S Order) and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP), and their intended effects. Other elements of the whole of Government framework will be progressed by the Department of Finance, Services and Innovation (DFS).

### 1.3. What is proposed?

The Department of Planning and Environment is proposing amendments to introduce the state-wide planning framework for STRA. Proposed amendments include:

- the introduction of a land use definition and permissibility for ‘short-term rental accommodation’
- the introduction of exempt and complying development criteria for STRA which will include a maximum number of days that STRA can operate in a calendar year
- allowing councils outside Greater Sydney to set the number of days that a dwelling can be used for STRA without development consent or with a complying development certificate, to no lower than 180 days per year, to meet the needs of their communities, and
- the introduction of minimum fire safety and evacuation requirements for premises used for STRA.

**Have your say.**

The Department of Planning and Environment is seeking feedback on the details of the planning framework for regulation of STRA in NSW. To make a submission, visit www.planning.nsw.gov.au/STRA.
Part 2 – Context

2.1. Short-term Rental Accommodation in NSW

The STRA industry has undergone rapid growth since 2012, supported by the emergence of online booking services and the sharing economy. Internet platforms have generated new marketplaces for STRA, benefitting consumers and providers by increasing accommodation options; providing opportunities to earn income from property assets; and broadening the economic benefits of tourism.

**Existing regulation of STRA**

The existing regulatory system for STRA in NSW comprises a voluntary Code of Conduct for industry, some scope for owners’ corporations to use strata laws to manage STRA impacts and locally derived planning controls.

This has caused uncertainty for industry navigating the permissibility of the use. In addition, some communities and businesses have raised concerns regarding impacts on amenity, noise, parking, safety, ‘quasi hotels’ and housing availability.

2.2. Policy history

**2012 & 2015**

The Holiday Rental Code of Conduct was originally adopted in NSW in 2012. Revised as a national code in 2015, with the key objective of encouraging acceptable standards of behaviour for STRA guests. This is a voluntary Code of Conduct.

**2015-2016**

The NSW Legislative Assembly Committee on Environment and Planning conducted an inquiry into the adequacy of the regulation of short-term holiday letting in New South Wales. In its investigation, the Committee recognised that STRA is a complex and multi-faceted issue requiring a whole of Government response. The Committee recommended that the NSW Government amend planning laws to regulate STRA; allow home sharing and short-term letting of a principal place of residence as exempt development; empty houses be let as exempt and complying development; and the existing Code of Conduct be strengthened.

The NSW Government released a response to the Committee’s recommendations in 2016, providing in-principle support for the key recommendations.

**2017**

During 2017, further consultation was undertaken with the community through a NSW Government Options Paper, which presented regulatory options for responding to STRA. The Options Paper was exhibited for 14 weeks.

During the public consultation there was broad support for a comprehensive, whole of Government solution considering planning, strata regulations, the industry code of conduct and a registration system.

- From a planning perspective, feedback included support for a state-wide definition and a standard approach to planning controls, but with provision to respond effectively to the specific local context.
- From an industry management perspective, the vast majority of stakeholders supported
strengthening the existing Code of Conduct through updating standards, mandating compliance and introducing a robust complaints management scheme.

- From a strata perspective, owners’ corporations supported additional powers, through by-laws, to be able to prohibit or restrict STRA on strata schemes.

2.3. Whole of Government Framework

On 5 June 2018, the NSW Government announced a policy framework for STRA in NSW, to be implemented by amending planning instruments and strata and Fair Trading legislation. This approach supports STRA occurring in NSW and manages potential impacts by providing appropriate controls for the land use and a new Code of Conduct that will apply to STRA booking services, letting agents that facilitate STRA, hosts and guests. It enhances the use of existing mechanisms and introduces new mechanisms to deliver a cohesive and effective framework that, once implemented, will provide a more consistent and accessible approach to managing STRA in NSW to the benefit of communities and industry.

**The proposed whole of Government framework**

- A State-wide planning framework developed by the Department of Planning and Environment to achieve consistency and certainty across local planning controls.
- A new co-regulatory Code of Conduct developed by DFSI with industry and other relevant stakeholders. The Code will apply to online accommodation platforms, letting agents, hosts and guests and address impacts like noise levels, disruptive guests and effects on shared neighbourhood amenities. The Code will also include a new dispute resolution process to resolve complaints, and NSW Fair Trading will have powers to police online platforms and letting agents.
- Changes to strata legislation, which will allow owners’ corporations to adopt a by-law, with a 75 per cent majority vote, preventing STRA in their block for lots that are not the principal place of residence of the host.

The Department of Planning and Environment is proposing planning amendments to give effect to the Government’s position on STRA in NSW. This EIE outlines the proposed amendments.
Part 3 – Planning Context

3.1. Current planning system

3.1.1. Defining STRA

At present, there is no state-wide planning definition for STRA and the SI Order does not expressly provide for the permissibility of this use. Currently, individual councils can determine where and when planning consent is required for STRA. Most councils do not specifically legislate for STRA and the use is commonly treated as an ancillary activity to the residential use of a dwelling.

STRA is regulated in a small number of some local government areas through the planning system. Eleven councils have defined the activity and circumstances when consent is required in their Local Environmental Plans (LEPs). Definitions, permissibility and controls vary between these councils. For instance, some councils allow the use without the need for any approval, while others consider STRA as ‘tourist and visitor accommodation’ or ‘residential accommodation’ and require approval. Some councils limit the activity by setting a maximum number of consecutive days or a maximum number of bedrooms.

3.1.2. Compliance and STRA

The existing planning system has strong compliance measures to address land use permissibility and compliance with planning legislation. Division 9.2 of the EP&A Act provides investigative powers which councils may apply where property owners are in breach of their consent. These powers cover investigation and authorisation, entry and search, obtaining information, and recording evidence.

There are also other regulatory powers available to the NSW Environment Protection Authority or Police to address amenity issues under the Protection of the Environment Operations Act 1997 (POEO Act). Residents can make complaints to these authorities which can issue a warning or a noise abatement direction under the POEO Act, issue an on the spot fine, or direct a person who is the occupier of a premise to stop making the offensive noise.

Feedback on the Options Paper suggested it can be difficult for councils to effectively use the existing enforcement and compliance powers when there are complaints about STRA due to the transient nature of the use; a lack of information regarding STRA activities; and the resourcing burden associated with proving non-compliances.
Part 4 – Proposed changes to the planning system

The proposed changes will simplify and clarify the planning regulation of STRA in NSW, by providing a single definition for the use and circumstances where approval is required for this activity. These changes seek to:

- clarify the permissibility of STRA
- provide consistency and certainty for the industry and community
- enable STRA to occur in appropriate locations
- provide for the safety of those using STRA
- strike a balance between the availability of properties for long-term and the short-term rental market in metropolitan areas
- enable councils in regional areas to respond to local needs and
- mitigate impacts of STRA on communities.

The planning framework for STRA will be given effect through amendments to the SI Order and the Codes SEPP.


Key changes

- Providing a definition for this activity – to be known as ‘short-term rental accommodation’.
- Making it clear that ‘short-term rental accommodation’ is not a form of ‘tourist and visitor accommodation’.
- Making it clear that STRA will be permissible in all zones in which dwellings are permissible.

4.1.1. Land use definition

Definitions for land uses in the planning system are generally located in the SI Order and it is proposed to include a land use definition for STRA in the SI Order Dictionary. This will allow the definition to be incorporated into all Standard Instrument LEPs.

It is proposed to define STRA as:

"the commercial use of an existing dwelling, either wholly or partially, for the purposes of short-term accommodation, but does not include tourist and visitor accommodation."

This indicative definition is intended to enable the use of a dwelling for STRA as a part of its residential use where:

- the dwelling is permissible with consent in the zone
- no physical alterations or additions would be made to accommodate the STRA use, and
- the dwelling has a current development consent or existing use rights for its use as a dwelling.
STRATA is intended to be permissible in secondary dwellings. It is proposed that some forms of residential accommodation, such as boarding houses, seniors housing and group homes, will be excluded from STRATA use to ensure they continue to meet their intended purpose. STRATA will also be excluded from “affordable rental housing” approved under State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH-SEPP) and State Environmental Planning Policy No. 70 Affordable Housing (SEPP 70), as these policies are aimed at increasing affordable rental housing for long term residential use.

4.1.2. Land use permissibility

The newly defined STRATA land use will be permitted in all zones where dwellings are permissible.

4.2. Proposed amendments to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

**Key changes**
- Include specific provisions and required development standards so that STRATA is permitted as exempt and complying development.
- Include minimum fire safety and evacuation requirements for individual premises used for STRATA.

4.2.1. Development approval pathways

The proposed exempt and complying development approval pathways for STRATA are based on different levels of risk associated with whether a host is present, whether the property is on bushfire prone land and days of operation in a calendar year. The pathways recognise that in certain circumstances, STRATA has minimal impact and therefore, a lower level of regulation is appropriate.

The table below identifies approval pathways available to STRATA activity, under the Government position.

**Table 1: Development pathways available to STRATA in state planning framework**

<table>
<thead>
<tr>
<th>Development Pathway</th>
<th>Criteria</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exempt development</td>
<td>• Host present on site overnight</td>
<td>Year round</td>
</tr>
<tr>
<td></td>
<td>• Host not present, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Property is not in Greater Sydney¹</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Property is not on bushfire prone land</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Host not present, and</td>
<td>365 days per year</td>
</tr>
<tr>
<td></td>
<td>• Property is in Greater Sydney</td>
<td>Councils will be able to set the number</td>
</tr>
<tr>
<td></td>
<td>• Property is not on bushfire prone land</td>
<td>of days from 180 days to 365 days.</td>
</tr>
<tr>
<td></td>
<td>• Host not present, and</td>
<td>180 days per year</td>
</tr>
<tr>
<td></td>
<td>• Property is in Greater Sydney</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Property is not on bushfire prone land</td>
<td></td>
</tr>
<tr>
<td>Complying development</td>
<td>• Property is on bushfire prone land</td>
<td>365 days per year</td>
</tr>
<tr>
<td></td>
<td>• Host not present, and</td>
<td>Councils will be able to set the number</td>
</tr>
<tr>
<td></td>
<td>• Property is not in Greater Sydney</td>
<td>of days, from 180 to 365 days.</td>
</tr>
<tr>
<td></td>
<td>• Property is on bushfire prone land</td>
<td>180 days per year</td>
</tr>
<tr>
<td></td>
<td>• Host not present, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Property is in Greater Sydney</td>
<td></td>
</tr>
</tbody>
</table>

¹ Please see Appendix 6.4.
In summary, the Government position is that:

- **When the host is present on site overnight:** STRA can proceed as exempt development for 365 days per year, noting the host’s ability to manage behaviour and impacts.

- **When the host is not present and the property is not on “bushfire prone land”:** The state-wide provisions will stipulate the number of days per calendar year that a property can host STRA as exempt development, as follows:
  - If the property is in Greater Sydney, a property may be used for STRA for no more than 180 days per year.
  - If the property is not in Greater Sydney, a property may be used for STRA up to 365 days per year. However, Councils in these areas will be able to reduce the number of days STRA is permissible to no less than 180 days.

- **When the host is not present and the property is on “bushfire prone land”:** complying development approval will be required for STRA. This is in recognition that additional safety measures are required to provide for the safety of guests who are unfamiliar with the location. A landowner will obtain a Complying Development Certificate and to do so would be required to address issues specific to bushfire prone areas, outlined at 4.2.3 below.

As this is an endorsed state-wide policy, it is proposed that no variations or development application pathways will be available to undertake STRA above these number of day limits.

### 4.2.2. Ability of regional councils to determine the permissibility of STRA

Under the policy, STRA will be permissible in areas outside Greater Sydney for 365 days per year. However, councils outside of Greater Sydney will have the option to reduce the number of days STRA can occur from 365 days, when the host is not present to no lower than 180 days, based on local needs.

Councils seeking to reduce the number of days are invited to provide an expression of interest to the Department of Planning and Environment within 8 weeks of the exhibition commencing.

If a council LEP does not amend the day threshold, the per annum state-wide policy will apply.

### 4.2.3. Exempt and complying development standards

The Codes SEPP contains core criteria that must be met for all the uses identified as exempt or complying development in the SEFP and criteria specific to different land uses and development types. This approach will be applied to STRA.

The general requirements set out in the Codes SEPP for exempt and complying development will apply to STRA progressing through these respective pathways. The following additional criteria are proposed to apply to STRA as exempt and complying development approval pathways:

- **The current use must be a lawful use, permissible under an environmental planning instrument (EPI) applying to the land and in a building approved for residential accommodation.**

- **The building in which STRA is proposed must comply at all times with all relevant planning, building, strata, fire safety and health regulations.**

- **No alterations or additions will be permitted to the building unless otherwise exempt. Other than safety standards below, the STRA activity does not authorise any building works. Any building works would be required to follow existing approval pathways.**
• STRA must not cause contravention of any existing condition of the most recent development consent that applies to the building.

• STRA must comply with relevant requirements under the strata scheme.

• The dwelling must comply with the safety standards outlined at 4.2.4, below.

**STRA on Bushfire Prone Land when the host is not present**

Development on mapped bushfire prone land must meet relevant bushfire safety requirements to minimise risk. In addition to the criteria above, the following specific criteria will apply to STRA as complying development on bushfire prone land:

• The land on which STRA can occur must be certified as being no more than Bush Fire Attack Level (BAL) 29 risk rating.

• Where a property exceeds BAL29 bushfire risk, it is proposed that a development application would be required to undertake STRA.

**4.2.4. Safety**

One of the considerations in developing the policy framework has been the safety of guests using STRA, who may be less familiar with the location where the host is not present. The Building Code of Australia does not provide any specific requirements for STRA. However, given safety in existing dwellings remains important, there is a need to consider how existing buildings used for STRA can meet acceptable safety standards. The intent is to manage risks for users of STRA, while still enabling the activity to occur.

In this regard, the following minimum fire safety and evacuation requirements for individual premises used for STRA are proposed:

**Table 2: Proposed Safety Requirements Applying to Dwellings Used for STRA**

<table>
<thead>
<tr>
<th>Dwelling type</th>
<th>Recommended standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>All dwellings</td>
<td>• No more than 2 persons/bedroom or 1.2 persons, whichever is the lesser</td>
</tr>
<tr>
<td></td>
<td>• Installation of smoke alarms in each bedroom, and the smoke alarms are interconnected where there is more than one alarm.</td>
</tr>
<tr>
<td></td>
<td>• Installation of a lighting system in hallways that is activated by the smoke alarm system.</td>
</tr>
<tr>
<td>Dwellings in multi-unit buildings only (Dwellings in Class 2 and 4 buildings)</td>
<td>• Entry doors should be openable from inside the dwelling without a key</td>
</tr>
<tr>
<td></td>
<td>• Installation of a self-closing device and smoke seals to all edges of the door, if the door opens onto a shared corridor and entrance doorway.</td>
</tr>
<tr>
<td></td>
<td>• Installation of a fire extinguisher and fire blanket in the kitchen.</td>
</tr>
<tr>
<td></td>
<td>• Making an Evacuation Plan, displaying ‘evacuation signage’ and familiarising guests with exit system.</td>
</tr>
<tr>
<td>Standalone dwellings only (Class 1a buildings)</td>
<td>• Installation of heat alarms in single dwellings which are located above a garage. This would be required only where the garage is not accessible to the guest/s.</td>
</tr>
</tbody>
</table>

It is also proposed that dwellings will not be able to be let for STRA to unrelated parties at one time. Related parties would include families, partners, friends and/or colleagues.
4.3. Noise and amenity impacts

Local councils and NSW Police have powers, under the POEO Act and other legislation, to respond to complaints about disturbances from activities in a dwelling. The Department of Planning and Environment will provide information to councils, industry and the local community on the application of these powers. As noted earlier, Division 9.2 of the EP&A Act provides investigative powers which councils may apply to exercise their functions under this Act. These powers cover investigation and authorisation, entry and search, obtaining information and recording evidence. No changes are proposed to these powers under these Acts.

4.4. Additional elements of the Government policy

In addition to the state-wide planning framework exhibited in this EIE, the Government policy also includes a new mandatory Code of Conduct and changes to strata legislation. All elements of the policy will work together to enable STRA, while managing potential impacts.


4.4.1 Mandatory Code of Conduct

A new mandatory Code of Conduct for online platforms, managing agents, hosts and guests will be developed by DFSi in consultation with industry and relevant stakeholders. This Code will include provisions to resolve complaints about STRA, including anti-social behaviour, that is readily accessible to hosts, guests and impacted third parties, such as neighbours. DFSi oversight of the Code, as well as enforcement powers in relation to implementation by industry and platforms, will provide direct levers to ensure that the proposed measures are implemented effectively.

4.4.2 STRA in strata settings

As part of whole of Government framework, the Strata Schemes Management Act 2015 will be amended to allow owners’ corporations (by a 75% majority vote) to make a by-law that prohibits the use of a lot for STRA where the lot is not the principal place of residence of the owner or tenant. However, if the lot is the principal place of residence for the owner or tenant, a by-law cannot prevent the lot being used for STRA. If the host does not own the property, they will be required to obtain owner permission to undertake STRA. A Bill enabling this change to be made was passed by NSW Parliament on 14 August 2018.

4.5. Transitional arrangements

Once made, the proposed amendments to the SI Order and Codes SEPP will mean the state-wide planning framework for STRA will automatically apply to all councils in NSW, including those with existing provisions. The Department of Planning and Environment will work with councils with existing provisions to amend their LEPs to be consistent with the state-wide framework, including appropriate transitional periods.
Part 5 – Have your say

This EIE outlines proposed changes to the NSW planning system to enact the planning framework announced in the NSW Government policy on STRA. The Department of Planning and Environment welcomes feedback, but notes that the state wide permissibility of STRA and number of days in which it can take place are a policy position which has been endorsed by Government.

5.1. How to make a submission

This EIE is available on the Department of Planning and Environment’s website at www.planning.nsw.gov.au/STHL.

You can make a submission online at the website or you can write to:
Director, Housing Policy
NSW Department of Planning and Environment
GPO Box 39, Sydney NSW 2001

5.2. Privacy policy

Your personal information is protected under the Privacy and Personal Information Protection Act 1998 (PPIP Act). The Department collects personal information in submissions for the purposes set out in the Department’s Privacy Statement.

We respect your right to privacy. Before lodging your submission, you will be asked to confirm that you have read the terms of the Privacy Statement, which sets out:

- how personal information is defined under the PPIP Act - it includes but is not limited to your name, address and email address,
- the purposes for which the Department collects personal information, and
- how personal information collected by the department will be used.

When you make a submission, we will publish:

- the content of your submission – including any personal information about you which you have chosen to include in those documents, and
- a list of submitters’, which may include your name and your suburb or town.

We will not publish offensive, threatening, defamatory or other inappropriate material. If you do not want your personal information published, please do not include any personal information in your submission. If you do not want your submission published at all, please note this in your submission.
Part 6 – Appendices

6.1. Summary of proposed amendments

Amendments to the planning system intend to:

- provide a single definition to be applied across NSW; and
- set criteria for exempt and complying development approval pathways where the use either meets the minimal environmental impact criteria for exempt development, or has been found to be generally of low environmental impact and can meet complying development criteria.

Changes are summarised in Table 2, and discussed further below.

Table 2: Summary of proposed changes

<table>
<thead>
<tr>
<th>Topic</th>
<th>EPI</th>
<th>Proposed change</th>
<th>Intention</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition</td>
<td>SI Order</td>
<td>Add a definition for ‘short-term rental accommodation’.</td>
<td>To provide greater certainty and clarity for councils, industry and community and to distinguish between STRA and traditional accommodation uses.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Add a note under the tourist and visitor accommodation definition that it does not include ‘short-term rental accommodation’.</td>
<td></td>
</tr>
<tr>
<td>Permissibility</td>
<td>SI Order</td>
<td>Make it clear that STRA will be permissible in zones in which dwellings are permissible.</td>
<td>To provide land use permissibility for STRA.</td>
</tr>
<tr>
<td>Exempt Development</td>
<td>Codes SEPP</td>
<td>Add ‘short-term rental accommodation’ including development standards required.</td>
<td>To enable the temporary use of dwellings as STRA for visitors based on certain criteria.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Include a provision that STRA is permitted as exempt development year round (365 days) where the host is present on-site overnight.</td>
<td>To enable STRA in this circumstance, recognising the lower impact of activity.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Include a provision that, if the host is not present, STRA is permitted in a dwelling on land that is not bushfire prone as exempt development:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- year round (365 days), if the property is outside Greater Sydney</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- for no more than 180 days per year</td>
<td></td>
</tr>
<tr>
<td>Topic</td>
<td>EPI</td>
<td>Proposed change</td>
<td>Intention</td>
</tr>
<tr>
<td>--------------------------</td>
<td>-----</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Compliance Development</td>
<td></td>
<td>year, if the property is in Greater Sydney</td>
<td>To recognise local differences and communities’ needs in regional NSW.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Include a provision that allows councils outside Greater Sydney to decrease the number of days STRA is permissible as exempt development per year from 365 days to no lower than 180 days, if they wish.</td>
<td>To ensure the safety of visitors using STRA.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Include minimum fire safety and evacuation requirements for individual premises used for STRA.</td>
<td></td>
</tr>
</tbody>
</table>

Complying Development, Codes SEPP

Include a provision that, if the host is not present and the property is on bushfire prone land (<BAL29), STRA is permitted in a dwelling as complying development:
- year round (365 days), if the property is outside Greater Sydney
- for no more than 180 days per year, if the property is in Greater Sydney.

To ensure the safety on bushfire prone land.

Include a provision that allows councils outside Greater Sydney to decrease the number of days STRA is permissible as exempt development per year from 365 days down to no less than 180 days, if they wish.

To recognise local differences and communities’ needs in regional NSW.

Include minimum fire safety and evacuation requirements for individual premises used for STRA.

To ensure the safety of visitors using STRA.
6.2. Relevant planning legislation

6.2.1. Environmental Planning and Assessment Act 1979

The EP&A Act is the principal legislative instrument for land use planning in NSW. It provides for amending planning instruments such as LEPs and state planning policies; enables the inclusion of a land use definition in the SI Order and provides for additions to exempt and complying development types.

The Act also provides for the determination of development applications and ensures that the assessment of proposed development considers appropriate matters. This includes consideration of environmental, economic and social impacts including noise, parking and amenity.

As noted above, the EP&A Act also contains compliance and enforcement powers for use when development does not comply with the approval process.

No amendments are proposed to the EP&A Act as part of the whole of Government policy or this EIE.

6.2.2. State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) simplifies the approval process for standard types of development.

The proposed amendments to the Codes SEPP will specify standard pathways for planning approval of STRA as exempt development and complying development.

6.2.3. Standard Instrument Order 2006

The SI Order prescribes the form and content of a principal LEP for a local government area for the purposes of section 3.20 of the EP&A Act in accordance with relevant state policies. It is a standard form LEP that applies to all local government areas in NSW. The SI Order establishes the land use planning framework and includes a range of definitions and appropriate land use zones for inclusion in each council’s LEP.

The inclusion of a definition for STRA in the SI Order and the identification of where it will be permissible will mean there is a consistent approach to the regulation of the activity across NSW.

6.2.4. Local Environmental Plans

LEPs are a local planning instrument applying to local government areas that specify where land uses are permissible and can set standards for types of development.

The state-wide policy will amend existing LEPs according to the SI Order.
### 6.3. Abbreviations

**Table 3: Abbreviations**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Intention</th>
</tr>
</thead>
<tbody>
<tr>
<td>Codes SEPP</td>
<td>State Environmental Planning Policy (Exempt and Complying Development) Codes 2008</td>
</tr>
<tr>
<td>DFSI</td>
<td>Department of Finance, Services and Innovation</td>
</tr>
<tr>
<td>EIE</td>
<td>Explanation of Intended Effect</td>
</tr>
<tr>
<td>EP&amp;A Act</td>
<td>The Environmental Planning and Assessment Act 1979</td>
</tr>
<tr>
<td>LGA</td>
<td>Local Government Area</td>
</tr>
<tr>
<td>LEP</td>
<td>Local Environmental Plan</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>SEPP</td>
<td>State Environmental Planning Policy</td>
</tr>
<tr>
<td>SI Order</td>
<td>Standard Instrument (Local Environmental Plans) Order 2006</td>
</tr>
<tr>
<td>STRA</td>
<td>Short-Term Rental Accommodation</td>
</tr>
</tbody>
</table>
### 6.4. Local Government Areas comprising Greater Sydney Region

<table>
<thead>
<tr>
<th>Area 1</th>
<th>Area 2</th>
<th>Area 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bayside</td>
<td>Cumberland</td>
<td>Northern Beaches</td>
</tr>
<tr>
<td>Blacktown</td>
<td>Fairfield</td>
<td>North Sydney</td>
</tr>
<tr>
<td>Blue Mountains</td>
<td>Georges River</td>
<td>Parramatta</td>
</tr>
<tr>
<td>Burwood</td>
<td>Hawkesbury</td>
<td>Randwick</td>
</tr>
<tr>
<td>Camden</td>
<td>Inner West</td>
<td>Strathfield</td>
</tr>
<tr>
<td>Campbelltown</td>
<td>Hornsby</td>
<td>Sutherland</td>
</tr>
<tr>
<td>Canterbury-Bankstown</td>
<td>Hunter’s Hill</td>
<td>The Hills</td>
</tr>
<tr>
<td>City of Sydney</td>
<td>Ku-ring-gai</td>
<td>Waverley</td>
</tr>
<tr>
<td>City of Parramatta</td>
<td>Lane Cove</td>
<td>Willoughby</td>
</tr>
<tr>
<td>City of Ryde</td>
<td>Liverpool</td>
<td>Woollahra</td>
</tr>
<tr>
<td>City of Canada Bay</td>
<td>Mosman</td>
<td>Wollongolli</td>
</tr>
</tbody>
</table>
REPORT ON NOTICE OF MOTION - NOM 23/10/18 - SHORT TERM ACCOMMODATION

REPORT BY: GOVERNANCE

CONTACT: DIRECTOR GOVERNANCE

DIRECTOR COMMENT

NSW Government Short Term Accommodation Policy

The Department of Planning and Environment (DPE) is proposing to introduce a state-wide planning framework for short term rental accommodation (STRA). The proposed framework includes:

i) The introduction of a land use definition and permissibility for ‘short-term rental accommodation’;

ii) The introduction of exempt and complying development criteria for STRA which will include a maximum number of days that STRA can operate in a calendar year;

iii) Allowing Councils outside Greater Sydney to set the number of days that a dwelling can be used for STRA without development consent or with a complying development certificate, to no lower than 180 days per year, to meet the needs of their communities and recognise the importance of tourism in some regional areas; and

iv) The introduction of minimum fire safety and evacuation requirements for premises used for STRA.

The proposed amendments are on exhibition until 16 November 2018.

DPE notes that the state-wide permissibility of STRA and number of days in which it can take place are a policy position which has been endorsed by the NSW Government.

In summary, the Government position is that:

i) When the host is present on site overnight, STRA can proceed as exempt development for 365 days per year, noting the hosts’ ability to manage behaviour and impacts.

ii) When the host is not present, and the property is not on ‘bushfire prone land’:

- if the property is in Greater Sydney, it may be used for STRA for no more than 180 days per year.
- if the property is not in Greater Sydney, it may be used for STRA up to 365 days per year. However, Councils in these areas will be able to reduce the number of days STRA is permissible to no less than 180 days.

iii) When the host is not present, and the property is on ‘bushfire prone land’, complying development approval will be required for STRA. This is in recognition that additional safety measures are required to provide for the safety of guests who are unfamiliar with the location.

Under the proposed planning framework, STRA will be permissible in dwellings and secondary dwellings. Some forms of residential accommodation, such as boarding houses, seniors housing and group homes, will be excluded from STRA use. STRA will also be excluded from ‘affordable rental housing’ approved under State Environmental Planning Policy (Affordable Rental Housing) 2009.

**Code of Conduct**

In addition to the proposed state-wide planning framework, the Government policy also includes a new mandatory Code of Conduct which is proposed to apply to anyone involved in providing or using STRA including hosts, guests, online platforms, and letting agents.

The Code will establish a ‘2 strikes and you’re out’ policy. Hosts or guests who commit two serious breaches of the Code within two years will be banned for five years. Platforms and letting agents will not be permitted to offer services to anyone, or any dwelling, that is listed on the exclusion register.

A strike will include any behaviour which unreasonably interferes with a neighbour’s quiet and peaceful enjoyment of their home.

The Code will establish a complaints system, which will be available to neighbours of STRA, strata committees and owner’s corporations. Complaints will be assessed by independent adjudicators, approved by the Commissioner for Fair Trading.

Strikes will be recorded on an online register to ensure that guests and / or hosts cannot ‘platform shop’. Platforms and property agents will have to check the register before taking on new customers. Failure to do so may result in significant penalties of up to $1.1million for corporations and $220,000 for individuals.

NSW Fair Trading will have powers to police online platforms and letting agents. The Code, its enforcement, the compliance system and the register will be funded by industry.

**RECOMMENDATION**

CN staff prepare a submission on the proposed amendments to the planning framework to enable STRA and manage impacts on communities.
The submission notes CN's intention to submit an expression of interest to DPE to allow CN to set a limit no lower than 180 days for the use of dwellings as STRA when the host is not present.

The submission includes a request that NSW Fair Trading implement a mandatory registration process for STRA, in addition to the mandatory code of conduct, to assist in monitoring compliance and impacts on long term rental accommodation, and that a definition of 'host' be included in the planning amendments.
CONFIDENTIAL REPORTS

ITEM-19 CON 23/10/18 - SALE OF LAND FOR UNPAID RATES AND CHARGES

REPORT BY: GOVERNANCE
CONTACT: DIRECTOR GOVERNANCE / 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 City of Newcastle. These properties are recommended for sale for debt recovery purposes.
ITEM-20  CON 23/10/18 - SOUTH STOCKTON ACTIVE HUB SKATE PARK AND PLAYGROUND - CONTRACT NO. 2019/001T

REPORT BY:  INFRASTRUCTURE AND PROPERTY
CONTACT:  DIRECTOR INFRASTRUCTURE AND PROPERTY / 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.

GROUND 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 the South Stockton Active Hub Skate Park and Playground for Contract No. 2019/001T.

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 City of Newcastle (CN) 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.
ITEM-21 CON 23/10/18 - ORGANISATIONAL REDESIGN AND STRUCTURE IMPLEMENTATION UPDATE

REPORT BY: EXECUTIVE MANAGEMENT / PEOPLE AND CULTURE
CONTACT: CHIEF EXECUTIVE OFFICER / INTERIM DIRECTOR PEOPLE AND CULTURE

REASON FOR CONFIDENTIALITY

This report has been classified confidential in accordance with the provisions of the Local Government Act 1993 as follows:

Section 10A(2)(a) of the Act provides that Council can close a meeting to consider personnel matters concerning particular individuals (other than Councillors).

Section 10B(1)(a) of the Act provides that a meeting is not to remain closed during the discussion of any item that is necessary to preserve the relevant confidentiality and privilege of employees.

GROUND 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 section 10A(2)(a) of the Act as it involves the Chief Executive Manager (CEO) reporting to Council on personnel matters concerning particular individuals related to the implementation of the organisation structure adopted by Council;

B Section 10A(2)(d) of the Act provides that Council can close a meeting to consider commercial in confidence information of a confidential nature that would if disclosed prejudice the commercial position of the person who supplied it;
The closed session involves section 10B(1)(a) of the Act that provides that a meeting is not to remain closed during the discussion of anything referred to in section 10A(2):

(i) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security; and

(ii) if the matter concerned is a matter other than a personal matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret – unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to public interest.